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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 852

JOSE TERRONES RIOS, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 14, 1959

CERTIORARI GRANTED APRIL 20, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 854

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[fol. 1-a]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 26019-CD

UNITED STATES OF AMERICA, Plaintiff,

v.

JOSE TERRONES RIOS, Defendant

(U.S.C., Title 21, Sec. 174—Concealment of illegally imported narcotics)

Indictment—Filed June 19, 1957

The Grand Jury charges:

On or about February 18, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant JOSE TERRONES RIOS did, after importation, knowingly and unlawfully receive, conceal, and transport, and facilitate the concealment and transportation of a certain narcotic drug, namely: approximately 2 ounces 60 grains of heroin, which said heroin, as the defendant then and there well knew, had been imported into the United States of America contrary to law, in violation of United States Code, Title 21, Section 174.

A True Bill

Herbert J. A. Goldsworthy, Foreman.

Laughlin E. Waters, Laughlin E. Waters, United States Attorney, Bond fixed in the amount of ——

[File endorsement omitted.]

[fol. 2] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION FOR (1) MOTION TO INSPECT, AND (2) MOTION TO QUASH INDICTMENT OR SUPPRESS EVIDENCE.—Filed July 11, 1957

To Laughlin E. Waters, United States Attorney for the Southern District of California:

Please Take Notice that on July 15, 1957, at the hour of 10 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Pierson M. Hall, United States District Judge, Federal Building, 312 North Spring Street, Los Angeles, California, defendant will move this Court for the following Orders:

1. An order permitting inspection by defendant of the grand jury proceedings in the above-entitled cause, on the ground that such inspection is necessary in the interests of justice.

2. An order quashing the indictment in the above-entitled cause in the ground that said indictment was based solely on evidence illegally obtained as a result of an unlawful search and seizure.

3. An order, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, precluding the United States Attorney from using certain evidence upon the trial of this action, said evidence consisting of a brown manila envelope and its contents. Said order will be sought on the ground that said property was illegally seized without warrant.

Said Motion will be based on this Notice of Motion, the [fol. 3] Memorandum of Points and Authorities in support thereof, the supporting Affidavits filed herewith, oral and documentary evidence which may be produced at the hearing, and upon the records and files of the Court.

Dated: July 10, 1957
Harvey M. Grossman
Attorney for Defendant

[File endorsement omitted.]

Proof of service (omitted in printing)

[fol. 4] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOSEPH T. FORNO IN SUPPORT OF: (1) MOTION TO INSPECT, AND (2) MOTION TO QUASH INDICTMENT OR SUPPRESS EVIDENCE.

STATE OF CALIFORNIA,
County of Los Angeles.

JOSEPH T. FORNO, being sworn states:

1. I am an attorney at law and a member of the firm of Forno & Umann. I make this Affidavit in support of defendant's motions to inspect the grand jury transcript and to quash the indictment or to suppress evidence.

2. Prior to March 12, 1957, criminal proceedings were instituted in behalf of the People of the State of California charging defendant with a violation of Section 11500 of the Health and Safety Code of the State. I was retained by Mr. Rios as his counsel of record in said proceedings.

3. On March 12, 1957, a preliminary hearing was had in said case in Division No. 4 of the Municipal Court in and for the County of Los Angeles before the Honorable Louis W. Kaufman, Judge presiding, at which Mrs. Florence Linn, Deputy District Attorney, appeared as counsel for the People and I appeared as counsel for Mr. Rios, said cause being denominated "The People of the State of California v. Joe Rios" and being case No. 136798 in the files of said court. The proceedings on said preliminary hearing were duly recorded by Helen Roberts, C.S.R., Official Reporter, [fol. 5] and subsequently transcribed under her direction. Attached hereto as Exhibit A, and incorporated herein by reference as though fully set forth, is a true and correct copy of the transcript of said proceedings. I was present at all the proceedings therein set forth and have examined the transcript and find that it presents a true and correct account of all the proceedings had on said preliminary hearing.

4. On May 10, 1957, the aforesaid case denominated "People vs. Joe Rios", came on for trial in Department 45 in the Superior Court of the State of California, before the Honorable Walter H. Odemar, Judge presiding, being case

No. 189270 in the files of the Superior Court. The proceedings at said trial were duly recorded by Carol E. Jacobs, C.S.R., Official Reporter, and subsequently transcribed under her direction. A true and correct copy of the transcript of said trial is attached hereto as Exhibit B, and incorporated herein by reference as though fully set forth. I was present throughout the trial as counsel of record for Mr. Rios and have examined Exhibit B and find that it presents a true and correct account of all the proceedings had at said trial.

5. Pursuant to the aforesaid proceedings of May 10, 1957, defendant was acquitted and released from custody.

Joseph T. Forno.

Subscribed and sworn to before me this 7th day of July, 1957 Burton Marks, Notary Public in and for said County and State

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[fols. 6-8] EXHIBIT A TO AFFIDAVIT OF JOSEPH T. FORNO

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, Division No. 4.

Hon. Louis W. Kaufman, Judge.

No. 136798

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

JOE RIOS, Defendant

Violation of Section 11500 of Health and Safety Code, a Felony

Reporter's Transcript of Preliminary Hearing Tuesday, March 12, 1957.

APPEARANCES:

For the People: Mrs. Florence Linn, Deputy District Attorney.

For the Defendant: J. T. Forno, Esq.
5/10/57, Dept. 45.

Judge Odeman

Not Guilty

Mar. 22, 1957

Helen Roberts, C.S.R. Official Court Reporter Los Angeles 12, California, Mutual 9211, Extension 3469

[fol. 9] Los Angeles, California, Tuesday, March 12, 1957: 1:45 O'clock P.M. Session.

The Court: People vs. Jos Rios.

Jack Olin Carter, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mrs. Lynn:

Q. What is your occupation, sir?
A. Police Officer for the City of Los Angeles, assigned to the Scientific Investigation Division as a chemist.

Mrs. Linn: Counsel, will you stipulate that the witness is an expert chemist for the purpose of the preliminary only?
Mr. Forno: Yes, we will so stipulate.
Mrs. Linn: If your Honor please, I have a brown Manila envelope. May the envelope and its contents be marked People's Exhibit 1 for identification?
The Court: So marked.

By Mrs. Linn:

Q. Showing you People's Exhibit 1 for identification, have you seen that before, sir.
A. Yes, I have.
Q. When and where?

A. I first saw this package on February 19, 1957, when it was received in a sealed condition from the Central Property Division at the main Police Building.

Q. And what did you do with it, sir?

[fol. 10] A. It was next transported to the Police Laboratories and there opened by cutting around the red seal with a pair of scissors. Within the larger envelope was a smaller envelope, which was sealed with the gum of the flap. This was opened by cutting across the top with a pair of scissors. Within this was a rubber sheath containing 60 grams of a white powdery substance.

Q. Did you examine that powder, sir?

A. Yes, ma'am, I did.

Q. In your opinion what does it contain?

A. In my opinion it contains a powder commonly referred to as heroin.

Mrs. Linn: Cross examine.

Mr. Forno: No questions.

Mrs. Linn: Thank you, Officer. Officer Beckman.

D. W. Beckmann, called as a witness by and on behalf of the People being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mrs. Linn:

Q. What is your occupation?

A. I am a police officer for the City of Los Angeles, assigned to Juvenile Division.

Q. Are you one of the arresting officers in this case?

A. Yes.

Q. And when and where did you arrest the defendant?

[fol. 11] A. On February 18, 1957, at 10:50 p.m., at First and State Streets.

Q. Was he in a vehicle at that time?

A. Yes.

Q. What kind of a car was that?

A. A Yellow Cab, bearing the license No. 1116.

Q. What time was it you made this arrest?

A. 10:50 p.m.

Q. Prior to the time you stopped the car in which the defendant was passenger, did you observe this Yellow Cab?

A. Yes.

Q. Where did you first observe it?

A. I observed it parked on the northwest corner of First and Flower in the parking lot, next to an apartment house.

Q. And did you watch this cab?

A. Yes.

Q. How long did it remain parked in the parking lot?

A. I watched it for approximately five minutes.

Q. Did you see anyone get into the car?

A. Yes.

Q. Who got into the car?

A. The defendant.

Q. What happened next?

A. I followed the cab to First and State Streets.

Q. You mean the cab took off?

[fol. 12] A. Yes. The defendant entered the back seat of the cab, the cab driver then drove eastward on First Street.

Q. Did anything happen as you followed the cab?

A. The cab barely made the light at First and Flower, he made it on the red, it was a borderline case. The cab then stopped at First and Broadway and then proceeded eastward to First Street to State, where I stopped it at First and State.

Q. Were you driving this automobile?

A. No.

Q. Your partner?

A. Yes.

Q. And did you pull the cab over to the side, or was it stopped at a traffic light at that time?

A. The cab was stopped in traffic.

Q. What did you do, sir?

A. I approached the cab on the right side, with my badge in my left hand and my flashlight in my right hand, and I identified myself to the cab driver and also to the defendant who was sitting in the rear seat.

Q. What happened at that time?

A. When I identified myself to the defendant he reached in his jacket pocket, a blue jacket, and dropped a white object on the floor.

Q. On the floor of the cab?

A. Yes.

[fol. 13] Q. And did your partner come up by this time?

A. When he alighted from the cab I told him he was under arrest for suspicion of narcotics, and grabbed him by the arm.

Q. What happened?

A. At that time also I tried to retrieve the object on the floor of the cab. The defendant pulled away from me, and my partner, Policewoman Grace, arrived on my side of the car at that time, and I told her to pick up the stuff.

Q. Did you see her pick it up?

A. No.

Q. What did you do?

A. I pointed the stuff out to her, and the defendant broke loose from me and ran southbound on State Street and westbou*t* or eastbound in the alley just south of First Street.

Q. Did you then apprehend him?

A. Yes.

Q. Did you bring him back to the cab?

A. No.

Q. What happened next?

A. I finally took the defendant into physical custody at Second and Cummings. At that time my partner, Policewoman Grace, drove up in the police vehicle and gave me the object that the defendant had dropped on the floor of the cab.

Mr. Forno: That is objected to as being a conclusion [fol. 14] of the witness, your Honor. I move the answer be stricken.

The Court: Objection sustained.

By Mrs. Linn:

Q. What did she hand you?

A. She handed me the object that looked like the object that I pointed out to her that was laying on the floor of the cab, that I saw dropped.

Q. What did this object contain and what was it?

A. I looked at the object and observed it contained a whitish powdery substance.

Q. What did you do with it?

A. Put the object in my pocket. Went to Georgia Juvenile and to Georgia Receiving Hospital where I talked to the defendant and then booked the object.

Q. How did you book it?

A. Marked the rubber, clear rubber container that the powder was in, with my initials and serial number; placed it in a small envelope, put my serial number and initials on that envelope; sealed it. Placed it in a large Manila envelope, sealed it with sealing wax and placed my right—left—right thumbprint on it.

Q. Will you look at People's Exhibit 1 for identification?

A. Yes.

Q. Is that the object that you just testified to receiving from Officer Grace?

A. Yes.

[fol. 15] Q. And that was similar to what you saw dropped on the floor, is that correct?

A. Yes.

Q. At the time you were attempting to place the defendant under arrest, he ran from you several times, is that correct?

A. Yes.

Q. Did he say anything during this time?

A. When he alighted from the cab he exclaimed, "I haven't done anything, I haven't done anything." I repeated two or three times, "You're under arrest for suspicion of narcotics."

Q. What did he say?

A. Repeated, "I haven't done anything, I haven't done anything," and then ran.

Q. Did he say anything else?

A. After I caught him the first time in the alley he pleaded with me to kill him. I told him to stop struggling to come with me, I'd put him in the hospital. He kept repeating to me, "Kill me, kill me, I want you to kill me, go ahead and shoot me."

Q. After you got him to Georgia Street did you have a conversation with him relative to the Exhibit 1?

A. I had a conversation with him after I had finally subdued him at Second and Cummings, and also in the ambulance en route to Georgia Hospital.

Q. And what did he tell you about Exhibit 1?

A. When I asked him questions about Exhibit 1 he kept [fol. 16] saying "Later, later, I'll tell you later."

Q. During this attempt to place the defendant under physical restraint, was it necessary for you to shoot?

A. Yes.

Q. Did you hit the defendant some place?

A. I don't know whether I did or not.

Q. You did take him to George Street Hospital?

A. Yes.

Q. Why was that, sir?

A. The ambulance arrived, and put him in the ambulance and I accompanied them to Georgia Hospital.

Q. You do not know why an ambulance arrived?

A. We called the ambulance.

Q. Then he had been shot?

A. Well, he was wounded.

Q. Where was he wounded, if you know?

A. In the back, and he was bleeding profusely on the left front part of his abdomen.

Q. Was there some reason you had for following this Yellow Cab after you saw it parked in this parking lot?

Mr. Forno: Objected to as calling for a conclusion of the witness, your Honor.

The Court: Objection overruled. It will be accepted for the reasonableness of the search and the arrest.

The Witness: I had made a narcotic arrest of a narcotic dealer who was using a cab in that same locality approxi- [fol. 17] mately three months ago.

By Mrs. Linn:

Q. Was it unusual to see a cab parked there in that location?

A. Yes.

Mr. Forno: That is objectionable.

The Court: He can give his opinion. Objection overruled.

By Mrs. Linn:

Q. All that you testified to occurred in the County of Los Angeles?

A. Yes.

Mrs. Linn: Cross examine.

Cross-Examination.

By Mr. Forno:

Q. Officer, you say you do not know whether you shot him or not?

A. I shot at him.

Q. He was standing about a foot in front of you with his back toward you and his hands in the air at the time, was he not?

A. Of course not.

Q. Where was he?

A. He was running down the alley.

Q. It is your testimony that he was running at the time he was shot?

A. Yes.

Q. How far away from him were you?

A. Approximately 20, 25 feet.

[fol. 18] Q. Just to refresh your recollection, officer, it is not a fact that you told him to stop, and he stopped? And you told him to turn around, and then you shot him in the back?

A. No, that's not true.

Q. This is not a fact?

A. No, it's not a fact.

Q. In other words, you do not know how he got shot, you do not know whether you shot him or somebody else shot him, is that your testimony?

A. I shot at the defendant. I saw the defendant stagger. I then caught up with the defendant, at that time he was bleeding.

Q. Go ahead and finish.

A. At that time he was bleeding, and I felt I had probably shot him.

Q. You knew very well you shot him, did you not?

Mrs. Linn: Object on the ground it is argumentative.

The Court: Objection sustained.

By Mr. Forno:

Q. Did you hear any other gun go off besides your own?

A. No, all I heard was one shot.

Q. You are a Juvenile Officer, is that right?

A. Yes, sir.

Q. And since you have been on the police force how many arrests for narcotics have you made?

A. In the six months of 1956, from January until June, I [fol. 19] went to court on narcotic cases 39 times.

Q. Were you assigned to the Narcotic Detail during that period?

A. No.

Q. You went to court. I am asking you how many arrests for narcotics you have made while you have been assigned to Juvenile.

A. While being assigned to Juvenile?

Q. Yes.

A. 22 arrests in the last nine months.

Q. Those 22 arrests, how many times did you arrest a person who was in a Yellow Cab?

A. One.

Q. Once. And that was some three months prior to this arrest, is that correct?

A. Yes, sir.

Q. And during that three months period you have been following every Yellow Cab where you saw somebody get in and investigating it, is that correct?

A. No, sir.

Q. This is the only one that you followed?

A. Yes, sir.

Q. Now, where was the Yellow Cab when you first saw it that night?

A. Parked in the parking lot on the northwest corner of First and Flower.

[fol. 20] Q. And were you staked out in that location or did you just happen to be driving by?

A. I staked out on the cab.

Q. On this particular cab?

A. Yes, sir.

Q. Did you know the cab driver?

A. No, sir.

Q. By the way, do you know his name now?

A. I believe the name is Malcolm. Either the first name was Malcolm or the last name.

Q. This cab driver's name was Malcolm, but you do not know whether that was the first or last name?

A. Yes, sir.

Q. Do you have his address?

A. Yes, sir.

Q. What is his address?

A. It's on the arrest report. I can't recall what it is.

Q. You followed this cab from the parking lot to the intersection of First and Broadway, is that correct?

A. Well, I followed it—yes, to First and Broadway.

Q. All right. Did it stop at the intersection of First and Broadway or is that where it ran the red light?

A. No; it ran a red light at First and Hill and stopped at the red light at First and Broadway.

Q. And did you stop the cab at First and Broadway or continue to follow it?

[fol. 21] A. Continued to follow it.

Q. I see. And how far did you follow it?

A. Exactly two miles.

Q. From First and Broadway?

A. From First and Flower.

Q. First and Flower. Now, at the time you stopped the Cab how did you do it? Pull up beside it in the police car?

A. No, in back of it.

Q. In back?

A. Yes.

Q. Did you have a red light or siren on at the time?

A. No, sir.

Q. How did you signal the cab driver?

A. The cab was in back of another vehicle that was stopped at the red light. The cab was in the lane next to the double line at First and State Street. I was directly in back of the cab. I alighted from the cab—I alighted from the police vehicle on the right side, and my partner, policewoman Grace, alighted from the police vehicle on the left side; we approached the cab.

Q. The cab was stopped in traffic?

A. Yes, sir.

Q. At a signal. All right. What did you do after you approached the cab?

A. Identified myself.

Q. Now, did you have any conversation with the cab [fol. 22] driver at that point?

A. No. I identified myself.

Q. What was your purpose in identifying yourself? Were you placing anyone under arrest at that point?

A. The purpose for identifying myself?

Q. Yes.

A. Was to let the cab driver know I was a police officer, and to let the defendant know that I was a police officer, and if he had any junk on him he was either going to eat it, throw it, swallow it or stash it.

Q. You pulled up in back of the cab in traffic and you approached it from the righthand side. Were you proceeding to arrest either the cab driver or the passenger at that point, as you approached the cab?

A. As I approached the cab?

Q. Yes.

A. No, sir.

Q. What were you investigating at that point?

A. Narcotics.

Q. What information did you have that would lead you to believe that there was narcotics either concealed in the cab or on either the passenger or the driver of the cab at that particular point?

A. By the defendant's actions in the place where I first observed him and the known locality.

Q. You mean because somebody got into a cab this aroused your suspicion?

[fol. 23] A. His manner of getting into the cab.

Q. Well, did he get in in an unusual manner?

A. Yes.

Q. Describe how he got into the cab.

A. The cab was parked on the parking lot. The defendant walked out to the lot, walked over to the sidewalk, looked northward on Flower and south on Flower and down First Street. He looked in that direction. Then he walked back. After walking around on the parking lot he walked back and then got in to the cab.

Q. You had no prior information concerning this defendant or the cab driver prior to stopping the cab?

A. That's right, sir.

Q. You had no prior information, confidential informant or otherwise, as to narcotics?

A. As to the defendant or the cab?

Q. Yes.

A. That's right.

Q. You had never seen this defendant before, had you?

A. No, sir.

Q. You stopped the cab and you say the defendant got out. And he broke and ran. Which direction did he run, and on what street?

A. We were just west of the intersection of First and State. He broke and ran across the—there is a pedestrian safety zone in the middle of the street there—he crossed that and ran east to the corner and south to State Street, [fol. 24] to the alley.

Q. How far is that alley from First Street?

A. How far is the alley from First and State?

Q. Yes.

A. Approximately a hundred ninety to two hundred feet.

Q. After leaving the cab where did you first stop the defendant?

A. After leaving the cab and his breaking loose from me?

Q. Yes.

A. In the alley.

Q. That is when you shot him?

A. I stopped him in the alley.

Q. You stopped him in the alley?

A. Yes.

Q. And that is when you shot him, is that right?

A. That's when I shot at him.

Q. Shot at him. How many shots did you fire all together?

A. One shot.

Q. One shot. Well, there is some doubt in your mind, then, as to whether or not you shot the defendant, is that correct, Officer?

A. No.

Q. No doubt in your mind. All right. We've got that cleared up.

Now, on direct examination you testified that this defendant broke away from you several times. You have told

us about once when he broke away at the cab. Now, will you [fol. 25] tell us when he broke away from you on the other occasions?

A. When I caught up with him in the alley and observed that he was bleeding——

Q. This was after you shot him?

A. This is after I shot at him.

Q. I see. You still shot at him. You are not sure whether you shot him.

Mrs. Linn: I object as it is argumentative.

The Court: Sustained.

Mr. Forno: All right.

Q. He is bleeding now. Somebody shot him, right?

A. Well, he's bleeding.

Q. Is it your testimony that he broke away then?

A. Yes.

Q. What did he do? Describe that for us.

A. He tried to kick me in the groin.

Q. He tried to kick you. Well, what did he do?

A. What did he do?

Q. Yes.

A. Tried to kick me in the groin.

Q. Well, did he kick you?

A. No.

Q. Now, Officer, you say he tried to kick you in the groin. What did he do in that connection? Did he kick at you or kick you, or what?

A. Kicked at me.

[fol. 26] Q. Kicked at you. But he did not hit you?

A. He didn't kick me in the groin. I don't recall whether he kicked me in the leg or not.

Q. Now, that is when you hit him with the blackjack, is that right?

A. No.

Q. When did you hit him with the blackjack?

Mrs. Linn: Object to that as assuming facts not in evidence. I have not heard of a blackjack yet.

The Court: I have not heard any direct examination as to that. Sustained.

By Mr. Forno:

Q. Officer, did you hit this defendant with a blackjack or any object after he was shot?

A. I tried to hit him, yes.

Q. You tried to. With what?

A. With a sap.

Q. With a sap. A Blackjack?

A. Yes. You can call it a blackjack.

Q. You missed him?

A. Every time I'd take a swing at him with it, when I tried to subdue him—first, I tried to handcuff him, I couldn't handcuff him, he tried to kick me. I hoisted my weapon and took out my sap, tried to subdue him with my sap. Had trouble subduing him with my sap because he kept fighting me down the alley.

Q. This is while he was bleeding all of the time?

A. Yes.

[fol. 27] Q. You were dressed in plainclothes, were you not?

A. Yes.

Q. Did you have your badge in your hand to identify yourself at that point?

A. Not at that point.

Q. I see. Now, we have you shooting at him in the alley, the defendant bleeding, and you were trying to subdue him with this blackjack. Now, did he break away from you at any time there in the alley and run?

A. Yes.

Q. How far did he run and where did he run to?

A. I chased the defendant from where he left the cab to where I finally subdued him, it's exactly two-tenths of a mile.

Q. I know. We have been all through that from the cab. But I am talking about in the alley now, where you shot at him and the defendant started to bleed. How far from that point was it that you finally subdued him, or was it right at that point?

A. No. It was approximately a block and a half that I pursued him.

Q. A Block and a half from there?

A. Through the alley.

Q. Did you shoot at him more than once?

A. No.

Q. You were alone at the time in the alley, right?

A. Yes.

[fol. 28] Q. With the defendant?

A. Yes.

Mr. Forno: That is all.

Mrs. Linn: Thank you, sir. Policewoman Grace.

BEVERLY P. GRACE, called as a witness by and on behalf of the People, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mrs. Linn:

Q. What is your occupation?

A. Policewoman for the City of Los Angeles, assigned to Juvenile Division.

Q. And were you with Officer Beckmann on the evening of the 18th of February of this year?

A. Yes, I was.

Q. And were you driving the automobile that followed the Yellow Cab in which the defendant was traveling?

A. Yes.

Q. When Officer Beckmann got out of the police vehicle what did you do?

A. I got out on the left side and went up to the left side of the cab.

Q. Did you see some object on the rear floor of the cab?

A. Not at that time.

Q. Did you come around to the passenger side of the car?

A. I came around to the passenger side and Officer Beckmann pointed at an object and told me to pick it up.

[fol. 29] Q. Did you pick that object up?

A. Yes, I did.

Q. And what was it?

A. It was a rubber container filled with a powdery substance.

Q. And did you turn that over to Officer Beckmann later on?

A. Later on.

Q. Will you look at People's Exhibit 1, does that appear to be the same object that you picked up and turned over to Officer Beckmann?

A. Yes.

Mrs. Linn: That is all.

Cross-Examination.

Mr. Forno:

Q. You pulled up behind this Yellow Cab in traffic, is that correct?

A. That's correct.

Q. You got out on the passenger side?

A. I got out on the driver's side, I was driving.

Q. On the driver's side, I see. You left your car in traffic?

A. That's right.

Q. About how long were you out of your car before you got back in the car?

A. Minutes.

Q. Minutes. Two or three?

A. Three or four.

[fol. 30] Q. Where did you go from there? Did you drive some place?

A. I drove down the alley.

Q. Down the alley?

A. Yes.

Q. Did you see your partner shoot at someone in the alley?

A. No.

Q. Did you arrive after the shooting or before the shooting?

A. After.

Q. After the shooting. You saw this defendant bleeding did you, in the alley?

A. Not in the alley.

Q. Where was he at the time?

A. He was at Second and Cummings, laying in the curb.

Q. Beg pardon?

A. He was at Second and Cummings, laying next to the curb.

Q. You mean lying in the gutter?

A. That's correct.

Q. At Second and Cummings?

A. Yes.

Q. About how far is that from this alley?

A. Maybe a quarter of a block from the end of the alley, or less.

Q. Was he lying in the gutter on Cummings or on Second Street?

A. Second Street it would be.

Q. On Second Street. How far from the intersection of Cummings?

[fol. 31] A. 10, 15 feet.

Q. Your partner was there at the time?

A. Yes.

Q. Did you see him use a blackjack on the defendant?

A. No.

Q. Did you see a blackjack in your partner's hand at any time?

A. No.

Q. Did you see a gun in your partner's hand?

A. Yes.

Q. That was at Second and Cummings?

A. No.

Q. Where was it that you saw your partner with his gun in his hand?

As he was running down——

Q. Where?

A. First Street.

Q. Running down First Street?

A. Yes.—correction—that would be State Street.

Q. State. Which direction on State?

A. South.

Q. South. On which side of State Street?

A. The east side.

Mr. Forno: The east side. That is all.

The Court: That is all.

Mrs. Linn: Thank you very much.

Offer in Evidence

May the exhibit marked for identification be received in [fol. 32] evidence?

The Court: To be received in evidence and marked as People's 1.

Plaintiff Rests

Mrs. Linn: The People rest.

Mr. Forno: There will be no defense testimony at this time, your Honor.

Let me object to the introduction of the evidence, your Honor, and move the suppression of it on the ground it is obtained illegally in violation of the Search and Seizure Rule.

The Court: Motion will be denied.

Mr. Forno: There is no defense at this time. However, may I be heard on the matter of bail?

The Court: Yes.

Mr. Forno: I understand the present bail is $5000.00. This defendant has no prior convictions. And he was wounded in this arrest. He is in need of medical attention, your Honor, and I feel he would make bail in the sum of $2500.00; if he is able to get out he could secure proper medical attention. He has quite a serious wound.

The Court: Do you want to be heard on the matter of bail, Mrs. Linn?

Mrs. Linn: There is a tremendous amount of heroin in that exhibit, your Honor?

The Court: This is about the heaviest heroin case, as far as quantity is concerned, that we have had for some time, Mr. Forno. I think bail will have to remain at [fol. 33] $5000.00. The defendant is held to answer. The date of arraignment is March 26, at 9:00 a.m., in Department 41 of the Superior Court. Bail is $5000.00.

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DIVISION No. 4.

No. 136798

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOE RIOS, Defendant

COMMITMENT

It Appearing to me that the offense in the within complaint mentioned, to wit, violation of Section 11500 of the Health and Safety Code, a felony, has been committed, and there is sufficient cause to believe the within named defendant, Joe Rios' guilty thereof, I order that he be held to answer to the same, that he be admitted to bail in the sum of Five Thousand Dollars, ($5000.00), and that he be committed to the custody of the Sheriff of Los Angeles County, until he gives such bail.

Dated this 12th day of March, 1957.

Louis W. Kaufman, Judge of the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California Committing Magistrate

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[fols. 34-35] EXHIBIT B TO AFFIDAVIT OF JOSEPH T. FORNO

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, DEPARTMENT 45

Hon. Walter H. Odemar, Judge

No. 189270

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

JOE RIOS, Defendant

Reporter's Transcript

May 10, 1957

APPEARANCES:

For the People: Harry P. Amstutz, Esq., Deputy District Attorney.

For the Defendant: J. Forno, esq., 139 N. Broadway, Los Angeles 12, California, MIchigan 4901.

[fol. 36] Los Angeles, California, Friday, May 10, 1957—2:00 P.M.

The Court: People against Joe Rios.

Mr. Amstutz: Ready, your Honor.

The Court: Pursuant to stipulation heretofore had in this Court, the Court has read and considered the contents of the reporter's transcript of Preliminary Hearing held on Tuesday, March 12, 1957, before the Honorable Louis W. Kaufman, Judge sitting as Committing Magistrate.

Mr. Forno: At this time, your Honor, the defendant moves to suppress the evidence and objects to the introduction of the evidence on the grounds of the illegality of the search and seizrue, your Honor.

In connection with that, if I may be heard briefly, as I recall the facts, the officer testified that he followed this cab, not from any information that he had received or confidential information, but from the fact that some months before he had arrested a narcotic dealer in a Yellow Cab. Now, he followed the cab, your Honor, for approximately two miles. There is no showing that he was—when he approached the cab, stopped the cab, it was in connection with a misdemeanor arrest or any violation of the law or traffic violation. He approached, his gun in one hand, his badge in the other, as I understand it, and that is when defendant jumped out of the car and ran, he said.

The Court: No, he had his flashlight in one hand and his badge in the other.

Mr. Forno: That is right, flashlight, and the badge. That [fol. 37] is right.

The Court: That is right.

Mr. Forno: And then he saw a white object in the rear of the cab. The defendant jumped out. He went after the defendant. Now, then, there was a shooting later on, but my——

The Court: No. Then he told the defendant the defendant was under arrest and the defendant broke away.

Mr. Forno: Yes. That is right, he ran. That arrest at that point, your Honor, in my opinion, was illegal arrest. There was insufficient proper cause in the matter of the arrest and the matter of the search. I submit that observation.

Mr. Amstutz: There is one case in point, the Oakland case; a taxicab late at night, the taxicab was double-parked. Your Honor is familiar with that one.

The Court: I am familiar with that case.

Mr. Amstutz: People submit the matter.

The Court: I am familiar with other cases, too, in the same district, San Francisco and Oakland, where the Court held just the opposite. The Court, District Court of Appeal held just the opposite and the Supreme Court denied further hearing thereon; and in that particular case—I don't always say this, but I, personally, agree much more with Judge Carter's dissenting opinion in that case than I do with the majority, and I don't always say that. I don't like to let out a man who had as much "stuff", as they call it, as Joe Rios had, but as I have so often said, and [fol. 38] different officers are having an opportunity to hear it, what in the world is the use of our having a Constitution and having rights if they are meaningless?

In this case, the officer very frankly stated up to the time of the arrest what happened. After that, when the fellow broke away, that is an altogether different story in my opinion. When the officer tells us, "You are under arrest, if it is an unlawful arrest, we might have our day in court, but when we run, after he once says that, we have to take the consequences. That is when the act becomes foolish, whether the arrest was originally proper or not.

As I see it, I can't possible see how this arrest could have originally been attempted under the information the officer very frankly tells us that he had. I don't think any reasonable man would think a felony had been committed because a man comes out of a building, looks up the street, and the other way on the street, then looks up First Street, then walks to an automobile in a parking lot, gets in a taxicab and drives away. What in the world there is in that, together with the fact it happens to be First and Hope or First and Flower—I forget which it is—and also that somebody else was arrested in a taxicab, when there are so many hundreds of taxicabs in this community, about three months before, just to state it shows the absurdity of it, insofar as I see, and your motion to suppress the evidence will be granted——

[fol. 39] Mr. Forno: Thank you, your Honor.

The Court: —with this big, long harangue, but it appears the officer is in court. I want him to know how I feel about it.

Mr. Amstutz: People rest.

Mr. Forno: People rest?

The Court: I find him not guilty as charged. They will get you sometime, Rios; they didn't get you this time but they will sometime.

Mr. Forno: Thank you very much, your Honor.

STATE OF CALIFORNIA,
County of Los Angeles.

I, CAROL E. JACOBS, Official Reporter of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that the foregoing pages 1 to 4, both inclusive, comprise a full, true and correct copy of the proceedings had and testimony taken in the matter of the above entitled cause.

Dated this 2nd day of July, 1957.
Carol E. Jacobs, Official Reporter.

[Vol. 40] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HARVEY M. GROSSMAN IN SUPPORT OF: (1) MOTION TO INSPECT, AND (2) MOTION TO QUASH INDICTMENT OR SUPPRESS EVIDENCE—Filed July 11, 1957

Harvey M. Grossman, 6535 Wiltshire Boulevard, Los Angeles, 48, California, Olympia 2,0700, Olive 3-0460, Attorney for Defendant.

STATE OF CALIFORNIA,
County of Los Angeles.

HARVEY M. GROSSMAN, being sworn states:

1. I a man attorney at law and was appointed on June 24, 1957 by Judge William C. Mathes to represent the defendant as an indigent. I make this affidavit in support of defendant's motions to inspect the grand jury transcript and to quash the indictment or to suppress evidence.

Prior to March 12, 1957, criminal proceedings were instituted against the defendant in behalf of the People of the State of California, charging the defendant with violation of Section 11500 of the California Health and Safety Code, which prohibits, *inter alia*, possession of narcotics as set forth in the affidavit of Joseph T. Forno.

3. On March 12, 1957, a preliminary hearing was had in said proceedings, at which the only testimony aside from that of an expert witness who identified a white powder as heroin, was that of the arresting officers, D. W. Beckman and Beverly P. Grace.

[fol. 41] 4. On May 10, 1957, the state action came on for trial before Judge Walter H. Odemar as detailed in the affidavit of Joseph T. Forno. Said trial was had on the reporter's transcript of the preliminary hearing. Judge Odemar acquitted the defendant on the ground that the evidence upon wihch conviction was sought was unlawfully obtained by an illegal search and seizure without warrant, as detailed in the Forno affidavit, and particularly Exhibit B thereto.

5. Thereafter on June 19, 1957, an indictment was filed by the Federal Grand Jury for the Southern District of California, charging the defendant with receiving, concealing and transporting illegally imported narcotics in violation of Title 21 U.S.C., Section 174. Both the description of the alleged narcotic and the alleged date of its concealment were identical with those testified to by Officers D. W. Beckman and Beverly P. Grace in the state court proceeding, as set forth in the affidavit of Joseph T. Forno, particularly Exhibit A thereto.

6. I am informed and believe that the only evidence before the grand jury which returned such indictment, and the sole basis of said indictment was the testimony of Officers Beckman and Grace regarding their unlawful search and seizure of the package of heroin, to which they testified at the preliminary hearing in the state court proceeding, and upon the basis of which testimony Judge Odemar ruled the search and seizure were unlawful and acquitted the de-

[fol. 42] fendant. In order to establish that this is in fact the case, it is essential that defendant, through his counsel of record, be permitted to examine the transcript of proceedings before the grand jury, and I therefore believe that

this is a case where such an examination is required in the interests of justice.

Harvey M. Grossman.

Subscribed and sworn to before me this 8th day of July, 1957. Anna Taylor, Notary Public in and for said County and State.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTIONS TO INSPECT GRAND JURY TRANSCRIPT, ETC.—July 16, 1957

At Los Angeles, Calif.
Present: Hon. Peirson M. Hall, District Judge:

Deputy Clerk: S. W. Stacey, Reporter: Agnar Wahlberg, U. S. Att'y, by Assistant U.S. Att'y: Leila Bulgrin. Counsel for Defendant Harvey M. Grossman, Esq. Defendant present in custody.

Proceedings: Hearing on: (1) Motion of defendant to inspect (2) Motion of defendant to quash indictment and or suppress evidence.

Order further hearing.

Filed transcript of proceedings had before Walter H. Odemar, Judge, May 10, 1957.

D. W. Beckman is called, sworn and testifies for government. Beverly P. Grace is called, sworn and testifies for government.

It is ordered that motion to inspect grand jury transcript is denied and further that motions to quash indictment and suppress evidence are also denied.

It is also ordered that trial be set for 10 a.m., July 23, 1957.

John A. Childress, Clerk.
By S. W. Stacey, Deputy Clerk.

[fols. 44-49] IN UNITED STATES DISTRICT COURT

VERDICT—Filed July 26, 1957

We, the Jury in the above entitled cause, agree and find the defendant Guilty as charged in the indictment.

Date July 25, 1957.

Murrary A. Wolfe, Foreman.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed August 21, 1957

To the clerk of the United States District Court for the Southern District of California, Central Division, and to Laughlin E. Waters, Louis Lee Abbott and Leila F. Bulgrin, attorneys for plaintiff.

You and each of you will please take notice that defendant, Jose Terrones Rios appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment of guilty entered in the above-entitled cause on July 25, 1957 upon a jury verdict rendered on July 25, 1957.

Name and Address of Appellant.

Jose Terrones Rios.
907 South Concord Street.
Los Angeles, California.

Offense: 21 U.S.C. 174 (One Count).

Verdict of guilty returned on July 25, 1957. Judgment imposing sentence of twenty years imprisonment entered on August 13, 1957.

Defendant is now confined in the Los Angeles County Jail.

Dated: August 19, 1957.

Harvey M. Grossman.
6535 Wilshire Boulevard.
Los Angeles 48, California.

Attorneys for defendant.

[fols. 51-60] Affidavit of Service by Mail thereon.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS TO BE RELIED ON—Filed August 30, 1957

The points upon which Defendant will rely on appeal are:

1. The Court erred in denying defendant's motion to Inspect Transcripts of the Grand Jury Proceedings in the above-entitled cause, which motion was made on the ground that such inspection was necessary for the ends of justice.

2. The Court erred in denying defendant's motion to Quash the Indictment, which motion was made on the ground that said indictment was based solely on evidence illegally obtained as a result of search and seizure, and upon proceedings theretofore had in the State Courts.

3. The Court erred in denying defendant's motion to Suppress Evidence, said evidence consisting of a brown manila envelope and its contents, which motion was made on the ground that said property was illegally seized without warrant, and upon the basis of proceedings theretofore had in the State Courts.

4. The Court erred in overruling defendant's objection to the admission of certain evidence, said evidence consisting of Government Exhibits 1, 1A and 1B, said objection being made on the ground that said property was illegally seized without warrant, and upon the basis of proceedings theretofore had in the State Courts.

5. The Court erred in denying defendant's motion for Acquittal, which motion was made on the ground of pro-
[fols. 62-64a] ceedings theretofore had in the State Courts and the manner in which the evidence relied upon by the Government had been obtained.

6. The Court erred in restricting defendant's right to examine statements by Government witnesses.

Dated: August 28, 1957.

Harvey M. Grossman.
Attorney for Defendant.

Affidavit of Service by Mail thereon.

[File endorsement omitted.]

[fol. 64b] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1-3] IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Peirson M. Hall, Judge Presiding.

No. 26019 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

JOSE TERRONES RIOS, Defendant

Reporter's Transcript of Proceedings

Los Angeles, California
Monday, July 15, 1957.

APPEARANCES:

For the Plaintiff: Laughlin E. Waters, United States Attorney, Los Angeles 12, California; by Leila Bulgrin, Assistant United States Attorney.

For the Defendant: Harvey M. Grossman, Esq., 6535 Wilshire Boulevard, Los Angeles 48, California.

[fols. 4-5] Los Angeles, California; Monday, July 15, 1957; 2:00 p.m.

COLLOQUY BETWEEN COURT AND COUNSEL

(Other court matters.)

The Clerk: Item No. 9. Case No. 26019, United States v. Jose Terrones Rios.

The Court: Let me see, there are several of these motions. Let us see who is ready.

Mr. Grossman: Ready for the defendant Rios.

[fol. 6] The Court: United States v. Rios.

I have read the affidavit, the transcript of the proceedings on the preliminary hearing, the transcript in the Superior Court and the memorandum filed by both counsel.

You may proceed.

Mr. Grossman: Thank you, your Honor.

May it please the court, I believe it would simplify matters [fol. 7] at the outset if one or two matters may be stipulated to as to which I understand there is no contention at this time factwise.

STIPULATION RE EVIDENCE BEFORE COURT

First I propose the following stipulation: that the Government in the instant case proposes to rely at the trial of this case solely upon the evidence which was before the State court trial judge, Judge Odemar of the State court, and was suppressed by him.

Will the Government so stipulate?

Mrs. Bulgrin: In this case there is no question but what the evidence in the Rios case in this court will be the evidence referred to in the transcript.

The Court: And nothing else?

Mrs. Bulgrin: Nothing but the physical evidence.

The Court: He is asking you to stipulate that your sole evidence will be that.

Mrs. Bulgrin: Well, no, I couldn't stipulate to that, Mr. Grossman.

I will stipulate that the heroin which was referred to in this transcript will be produced at the time of trial and will be offered in evidence.

The Court: And the testimony of the two police officers?

Mrs. Bulgrin: That is right.

The Court: Who testified at the preliminary hearing?

Mrs. Bulgrin: Mrs. Grace and Mr. Beckmann.

[fol. 8] The Court: They will be the witnesses?

Mrs. Bulgrin: That is correct.

The Court: Whether or not you have other evidence you are not disclosing at this time?

Mrs. Bulgrin: To the best of my knowledge at this time we do not. I wouldn't want to preclude myself if I discover that to be the case.

The Court: Will you accept the stipulation which I understand Mrs. Bulgrin says the Government is willing to agree to, that the two police officers will be called as witnesses, who testified in the preliminary hearing, and

that the heroin which was there referred to and secured by the police officers will be offered in evidence?

Mrs. Bulgrin: That is the heroin which is referred to in the indictment filed in this particular case, your Honor, and the only charge in this case.

The Court: Very well.

Mr. Grossman: So stipulated.

The other stipulation I would like to offer before your Honor, if the Government will so stipulate it can obviate the need of one of these motions, and that is as follows: that the sole evidence before the grand jury which returned the indictment in this case connecting the defendant with the alleged offense was the testimony of Officers Grace and Beckman and the evidence which was suppressed in the Superior State Court proceeding.

[fol. 9] I believe in light of Mrs. Bulgrin's statement that this is the only evidence that she is aware of, that the Government may well be willing to stipulate, which will obviate the necessity of getting into the grand jury transcript.

Mrs. Bulgrin: I don't believe that that stipulation would be pertinent here, your Honor.

The Court: Do you decline it?

Mrs. Bulgrin: I will decline that stipulation.

The Court: Very well.

Discussion re Motions

Mr. Grossman: In that event, then, we will proceed on all three motions.

The Court: Three? I thought there were only two.

Mr. Grossman: One is in the alternative. There is a motion to inspect and a motion to quash the indictment or suppress the evidence in the alternative. Actually it is two motions.

The Court: Yes.

Mr. Grossman: The facts of this case are rather simple. Two members of the juvenile department of the Los Angeles Police Department arrested the defendant and

thereafter proceedings were had in the State courts based on a charge of unlawful possession of narcotics.

At the trial of those two proceedings the only evidence before the trial judge——

[fol. 10] The Court: Now, you have attached those to your affidavit and I take it therefore that you are offering those transcripts in evidence?

Mr. Grossman: They are offered in evidence, your Honor.

The Court: Are you offering them in evidence as proof of the facts therein set forth?

Mr. Grossman: For the purpose as proof of the facts therein set forth, for the purposes of the present motion, your Honor.

The Court: What I am trying to get at is whether or not you are depending upon a matter of fact as the basis of your motion that the search and seizure was unlawful, or whether you are just carrying one string to your bow and that is that the State court, having decided that it is unlawful, that that is binding on this court.

Mr. Grossman: Well, if I may restate our position, our position is this, your Honor, that the State court, having held that the evidence was illegally obtained as the result of an illegal arrest and search and is therefore inadmissible under the Cahan decision, that therefore as a matter of law without any additional factual determination by this court it must be accepted.

The Court: Without any consideration of what the facts were?

Mr. Grossman: Without any consideration of the under-
[fol. 11] lying facts other than the ruling.

The Court: Other than the fact that they held that it was unlawful?

Mr. Grossman: That is correct.

The Court: Yes?

Mr. Grossman: That is the sole issue.

The Court: That being so, do you desire to offer the transcript in evidence on behalf of the Government to show, as a matter or fact, that the search and seizure was unlawful?

Mrs. Bulgrin: Your Honor, I will consider two possibili-

ties, either the transcript or the police officers who are present in court. I think perhaps I would like to do so at the present time, that is, with respect to the first transcript only of course.

The Court: There was no evidence in the hearing before the Superior Court except the transcript of the preliminary hearing, is all?

Mrs. Bulgrin: I think for all practical purposes that the transcript could be so used.

The Court: Do you offer that on behalf of the Government?

Mrs. Bulgrin: I will offer it on that limited issue, your Honor. Since the court is trying this motion, if it appears that the court wishes additional facts to determine the matter, I have the police officers here in court. But it may [fol. 12] be that our discussion of the motion will make it apparent that we should have additional evidence.

Mr. Grossman: May I be heard on that?

The Court: Yes.

Mr. Grossman: I object on behalf of the defendant to the offering of this evidence into the record because it is our position——

The Court: You have already put it in the record.

Mr. Grossman: That it be admitted into evidence so that the facts thereof are put into evidence. That is the request that has been made, as proof of the facts therein contained.

The Court: The United States can offer any facts in opposition to your motion which they desire.

Mr. Grossman: May I explain my reason for this objection. It is simply this, your Honor, that we view the law in this matter, the essential issue here, is the fact that the State court has made a determination which, in so much as it is inadmissible under State law, and the applicability of the Cahan decision is final, there is no appeal that has been taken or perhaps could be taken from that ruling, and it is our contention, your Honor, that as a result of that determination of the State court that the Cahan decision precludes the use of the evidence in the State court, that any use of the procedures and processes of this court to permit use of that evidence in a Federal prosecution, leav-

ing aside any question of what might have been the case [fol. 13] if this court had been called upon in the first instance to determine de novo as to the legality of illegality of the search and seizure, that the State court having held that the Cahan decision precludes this evidence that this court may not lend its processes, constitutionally and also as a matter of policy, to any procedure which would sanction a frustration of the State court ruling on this illegal search and seizure matter. And if I might be heard very briefly on that, it really goes in a sense to the heart of one of our principal arguments here.

The Court: That is what I am here for, to hear you.

Mr. Grossman: Very well.

Our position is briefly this, your Honor: Our first point may be simply stated in these terms, that in the case of Wolf v. Colorado, cited in our memorandum, the United States Supreme Court held and stated—this is the majority opinion to which I am referring—that a state may not sanction unlawful searches and seizures, that an unlawful search and seizure is itself a violation of due process, but that in order to determine the methods best suited to prevent such unlawful searches and seizures, such violations of due process, the states have a degree of latitude.

Now, prior to the Cahan decision, California did not adopt the procedure which the Federal courts adopted under the Weeks decision in excluding evidence so illegally [fol. 14] obtained as the means of preserving the rights against searches and seizures which are unlawful.

However, in Cahan the California Supreme Court came to the conclusion that in order to give any real substance against unlawful searches and seizures, a right which has been protected against by the Fourteenth Amendment to the Federal Constitution, that it was necessary for the California courts to adopt the same procedure used in the Federal courts, namely, the exclusionary rule of evidence.

Now, in so doing we have dual sovereignties with a common policy designed to achieve a common result in preventing an infringement of constitutional rights.

Now, in the instant proceeding the State court has held that under Cahan, the applicable State authorities, this

evidence was unconstitutionally seized and is therefore inadmissible. This has been determined as far as the State is concerned.

Now, if Cahan is to have any meaning and if the State is to be permitted to preserve the constitutional right against search and seizure by the methods which the State and Federal governments have found to be the only means of so doing, it is essential that the Federal Government not lend its offices to a circumvention of Cahan, saying, granted California is trying to prevent unlawful search and seizure, and they are seeking to do it in the very method by which the Supreme Court of the United States has indicated will [fol. 15] be done in the Federal courts. But in spite of this we, as the Federal courts, are going to sanction a circumvention of that rule by resort to the fact that there happened to be dual sovereignties, dual sovereignties with a common policy on this matter.

Now, my position, your Honor, is simply this: If the Federal court is to lend itself to a circumvention of Cahan and thereby, in effect, frustrate the State's attempt through Cahan to provide an effective procedure for preventing infringement of constitutional rights against unlawful searches and seizures, then the Federal courts themselves will be violating the right to due process under the Fifth Amendment to the Constitution as well as the provision of the Fourth Amendment dealing with searches and seizures, in that they will by sanctioning and abetting a violation of the Fourteenth Amendment or a circumvention of the Fourteenth Amendment, and preventing the states from protecting rights under the Fourteenth Amendment, that the Federal courts themselves will be depriving the defendant of his constitutional rights and that, furthermore, aside from the constitutional aspects, simply as a matter of policy as well as of constitutional level, it is rather absurd for the Federal Government to say to a state which adopts the Weeks rule, very well, you didn't have to adopt this rule but you have adopted it as a means of protecting the constitutional right against unlawful searches and seizures; [fol. 16] now having adopted that rule we are going to insist in frustrating you, albeit, I dare say, that if the situation were reversed, certainly as a matter of policy, the

Federal courts would certainly presumably be aghast if California, for example, were to encourage circumvention of the Federal search and seizure rule by saying, well, Federal officers can come in here and testify.

Now, it is our position, briefly, your Honor, that at the constitutional level, and also at the policy level, that this court should not sanction an evasion of Cahan and prevent the state from committing unlawful searches and seizures by the means which they have chosen to be effective . Granted they might not have chosen that means under the Wolf decision, but having chosen that means as the only effective means of vindicating a constitutional right against unlawful searches and seizures, I respectfully urge that this court should not lend its offices to frustrating that policy, particularly when to do so would be to frustrate a policy which California now shares with the Federal courts in this area.

Now, the Government has cited cases in its memorandum. I had an opportunity to examine this memorandum and I note they cite three cases there. None of these cases, if the court please, involve situations where the State court had had proceedings determining the illegality of the other.

Now, certainly it is one thing to say——

[fol. 17] The Court: But they proceeded on the assumption that the searches and seizures in those cases were illegal.

There are two cases in the Ninth Circuit—I have forgotten the names of them——

Mr. Grossman: The Parker case is the only Ninth Circuit case in point, but there is the Jones case and one other in another circuit that I would like to cite in answer to those cases. There are two distinguishing factors present in those cases.

Now, first of all, in none of the cases was the point we are contending for here raised, namely, that this was a situation in which the evidence was inadmissible in the State court and consequently there would be a frustration of the dual policy here that is involved here.

A reading of these opinions indicates that this was not raised in any of them. The sole contention raised was as to questions of participation, and so forth, which are not involved here.

And, secondly, in none of those cases did we have a State court holding that the evidence would be inadmissible under its rule of exclusion. Therefore by clearly indicating that any action by the Federal courts would be frustrating a decision of the State courts attempting to apply the state exclusionary rule.

That is precisely what is involved here. Certainly it is [fol. 18] one thing for a Federal court to say, we will not in the matter of the first instance consider questions as to whether this was illegal or not under the State procedure, because once the states make that determination then there is a question of a direct frustration of the State decision on the search and seizure point by the Federal court that wouldn't be involved otherwise. And, in addition, your Honor, none of these cases—and I don't believe the Government could find one, they certainly haven't cited any—raise the proposition I am addressing myself to.

I might say, your Honor, that I am informed it was raised, that one phase of this matter was raised, namely the question of the effect of the Cahan decision was raised in a decision before Judge Mathes a few weeks ago, in which I understand Mrs. Bulgrin here was trial counsel, and after discussing the case with Mrs. Bulgrin I am sure she will not dispute this.

Mrs. Bulgrin: That was the Proctor and Hall cases, your Honor. Mr. Bender was there.

The Court: Did you get a writ in the Daniels case?

Mr. Graves: At the present time we have asked for the record to be prepared, and I have been running down my points to see whether or not I am going to have sufficient grounds to get a writ. I have been reading the authorities to see whether or not there is an equitable ground to go up on there because they don't normally permit it and they [fol. 19] were not accepting appellate jurisdiction. However, I think I might make it.

The Court: If not, I believe that the denial of this motion is now appealable, is it not?

Mr. Graves: I understand there is no interlocutory appeal to the denial of this motion.

The Court: The United States may appeal.

Mr. Graves: That is correct.

The Court: Is that your position?

Mrs. Bulgrin: You mean from an interlocutory order?

The Court: Either party may appeal from a motion to suppress.

Mrs. Bulgrin: Apparently that was the Government's position, that the defendant could appeal from the judgment if the motion were denied during the course of the trial.

But the Government could appeal from the order itself granting the motion in a narcotics case.

Mr. Graves: It might be better procedure, your Honor, if your Honor granted this motion so that it would not have to be appealed by the Government and then set our case over for trial.

The Court: That might be good procedure for you, but I cannot bring myself to do that consistent with my oath. I must decide it according to the way I think it ought to be decided and let everybody take whatever procedure is open to him.

[fol. 20] Mr. Grossman: May it please the court——

The Court: I think, as I said to Mr. Graves the other day, counsel, I think I am bound by the Ninth Circuit case and the other case in connection with this matter. In the other case, it was a situation where the state had had a search and seizure, had had a preliminary hearing, the man was bound over, they tried it and the court dismissed it on the ground of unlawful search and seizure. In other words, the identical legal point was present there as here, and it was argued very competently, but I felt bound by this Ninth Circuit case and the other case—I have forgotten the name.

Mrs. Bulgrin: The Parker case.

The Court: There were three cases.

Mrs. Bulgrin: Parker, Anderson and Lustig.

The Court: So it seems to me that I am still of the same opinion.

Mr. Grossman: May I suggest one fact to the court? I would like to call one other matter to the court's attention, if I may.

The Court: Yes.

Mr. Grossman: I believe it is unfortunate that at the time this court had a reconsideration of the Daniels case which had previously been decided by Judge Mathes, that it was not called to the court's attention, that is, subsequent to the original proceeding before Judge Mathes. I think [fol. 21] there was a later proceeding before him which led to a motion for reconsideration. But I mean subsequent to a decision by Judge Mathes a point came up before him in the Proctor and Hall case in which Mrs. Bulgrin represented the Government, and in this subsequent decision, although I believe Judge Mathes at the outset may have shared the view which your Honor has indicated, that after considerable argument during the proceedings, which lasted a day and a half or two days, Judge Mathes held that in light of the Cahan decision which adopted the exclusionary rule, and relying upon the case of United States v. Gambino, I believe was the principal authority—perhaps some other authority—he held that where evidence is inadmissible in the State court proceedings that it might not be under the exclusionary rule or other appropriate rule, that that evidence may not be admitted in a Federal court proceeding, and in so ruling he distinguished the cases that are cited by the Government, saying that none of these were applicable on the ground that, as far as I am aware, none of these involve situations where the State court, where the exclusionary rule was present, and this point was raised.

Now there are a couple of cases that the Government has here—I don't know whether they were cited before Judge Mathes or not—but they are cases likewise where the Government suggests a possibility of excludability under the State court law, but there is certainly no intimation that [fol. 22] that point was raised in any of these cases. And I submit, your Honor, at the time the Government argued that case before Judge Mathes a few weeks ago, he did so rule, and I submit that the decision reached by Judge Mathes after further reflection should likewise be the decision of this court, namely, that in light of the Cahan decision and the frustration of that decision which would result, the evidence should not be admitted in this court as a means of frustrating the policy, regardless of the applicability of the "silver platter" doctrine where this point isn't involved or isn't raised.

I submit that the Government still to this day cannot cite a single case where that point has been ruled upon by any court of appeals' decision whatever.

The Court: Neither side can.

Mrs. Bulgrin: That is correct, I think, your Honor.

I might say that counsel was inadvertent in referring to the Proctor and Hall case, your Honor, as being decided subsequent to the decision which Judge Mathes gave in the motion to suppress in the Daniel case. That Proctor and Hall case was tried by myself before Judge Mathes and it was before the Daniel case in which Judge Mathes ruled upon a motion.

The Court: I do not have the facts or the information on the Proctor and Hall case.

Mrs. Bulgrin: Well, it was preceding rather than subsequent.

[fol. 23] The Court: I take it there may have been some ground of distinction in his mind.

In any event——

Mr. Graves: May I address the court before your Honor rules?

The Court: Yes.

Mr. Graves: If your Honor pleases, may I appear for the purpose of amicus curiae for the purpose of one statement?

The Court: Yes.

Mr. Graves: Your Honor, as I understood your Honor the last time I appeared before this court and argued this same point, you expressed some concern about whether this should not be passed on by the Circuit Court, that it involves a serious question of law enforcement policy.

The Court: It does.

Mr. Graves: That being the case, I think you should take into consideration that many defendants may be forced to a trial if there is no provision for a writ of mandamus, which seems to them difficult, and I going to actually have to expound theories to get there as I understand the present rules.

That being the case——

The Court: I do not know, the Ninth Circuit Court of Appeals have used the extraordinary writ power in some

most extraordinary manner, and entirely beyond my comprehension as to where they get the power, but they have said so and that is it.

[fol. 24] Mr. Graves: I am a little bit afraid of some of the very recent Supreme Court decisions which seem to indicate that they should and may only correctly exercise it in aid of their appellate jurisdiction, and that when the defendant can appeal from the judgment, that they should not exercise the prerogative of the writ power.

That being the case, many defendants may be forced to trial, all of them having to go through the procedure of the record cost, bail cost, going to custody pending outcome, and all that that entails.

The Court: That is right too, but on a proposition of this kind I cannot consider convenience. It is a matter of justice, and in my view it is a matter of what the law is. I have got to ascertain the law is I see it and as I can declare it regardless of whether it is convenient or what would be the easiest way to get it settled.

I would like to see it settled quickly by the appellate court because the question is bound to arise, not only in California, in this district, and in every narcotic case, because so far on my calendar there will be a motion to suppress in every narcotics case. Hasn't that been true, Mr. Abbott?

Mr. Abbott: Well, certainly by far the greatest number, your Honor. It must be close to all.

The Court: I suppose pretty soon in every case there will be a motion to suppress, whether they have a good [fol. 25] ground or not they will make a motion to suppress, in order to protect the record.

Mrs. Bulgrin: Your Honor, I think it might be of interest, that that case which I tried the motion was made in the middle of the trial and I didn't have a chance to present the case that you mentioned to Judge Mathes. So we were laboring somewhat under difficulties.

The Court: In any event, so far as Mr. Grossman's point that the evidence should be suppressed because the State court, the instrumentality of the State authorized to rule on it, has held that it was unlawful under the State law and that therefore this court must hold that the search and seizure was unlawful, I will hold that your point is not well

taken and I feel bound by the three cases which I mentioned a little while ago.

Now, that does not mean the end of your motion. If you wish to proceed on the factual basis and call the defendant or call whatever witnesses you have here, I think that that being the case the matter stands in the posture where I must decide as a question of fact whether or not the search and seizure was unlawful.

Mrs. Bulgrin: And, secondly. I would say whether there was any Federal participation.

The Court: It covers the whole gambit of whatever can be introduced.

[fol. 26] Mr. Grossman: May I be heard on the second phase?

The Court: Yes. Now you have not argued the motion to secure the transcript of the grand jury proceedings.

Mr. Grossman: No, your Honor. Would you prefer to have that motion argued prior to the other phase of this other motion, that is, prior to the question of whether factually there was an illegal search and seizure here? Would you prefer to have the question as to the grand jury transcript argued first? I am prepared to argue that at the present time, if the court please.

The Court: I do not know that it makes much difference. The motion to secure the grand jury transcript is on the ground of a motion to quash.

Mr. Grossman: That is correct.

The Court: It is in support of your motion to quash.

Mr. Grossman: That is correct.

The Court: And the ground of your motion to quash is that there was an illegal search and seizure.

Mr. Grossman: That is correct.

The Court: So you come right back to the same point.

Mr. Grossman: That is correct, your Honor.

The Court: So I think that we would perhaps proceed, if you desire—I mean if you desire to stand on the record as you now have it; you may want to do so—but if you desire to proceed on the factual basis you may do so.

[fol. 27] Mr. Grossman: I would like to make it clear for the record that in urging the second point the defendant is not waiving any rights he may have under the first phase

of this, namely, the question as to whether this factual matter could properly be determined by this court.

The Court: I quite understand that.

Mr. Grossman: Very well. With that express reservation, then, your Honor, I would like to state that insofar as the factual background of this is concerned, the defendant is quite content to accept what the Government referred to previously.

The Court: It is your move now to put the facts on, if you desire.

Mr. Grossman: Very well, your Honor.

At this point, in connection with this second phase of our motion——

The Court: That is to say, for my determination as to whether or not, in fact, it was a lawful search and seizure.

Mr. Grossman: That is correct, your Honor.

The Court: Yes?

Mr. Grossman: With the aforementioned reservation, I would like to offer in evidence before the court as a statement of the facts therein contained for purposes of this motion the transcript of the testimony of the police officers, and I call the court's attention to the fact that this is the [fol. 28] testimony of the arresting officers themselves in the State court proceedings, upon the basis of which the State court ruled that there was an illegal arrest and an illegal search and seizure.

And I would like very briefly, if I may, to address myself to that phase of our motion.

The Court: Is there any objection to the introduction of that transcript?

Mrs. Bulgrin: That would be of the preliminary transcript, your Honor?

The Court: The transcript of the preliminary hearing which was held before the Superior Court obviously when the defendant was bound over.

Mrs. Bulgrin: No, your Honor.

The Court: Very well. It is admitted.

(The transcript referred to was received in evidence as an exhibit, but not numbered.)

The Court: Is it stipulated between the parties that if the same questions were asked of the witnesses there produced the answers would be the same?

Mr. Grossman: It is so stipulated.

Mrs. Bulgrin: So stipulated.

The Court: Very well.

Mr. Grossman: Now, essentially the testimony of the officers, principally Officer Beckmann, was to the following [fol. 29] effect——

The Court: Just a moment, counsel. I am wondering whether or not you would be able to conclude this matter today.

Is it your intention to produce the police officers in addition, or do you know?

Mrs. Bulgrin: No. It would just depend on how the argument goes. Mr. Beckman is present. It may be that the transcript will be sufficient. However, I have him present and we may request leave of court to put him on as a witness. He can return at another time if the court wishes to recess now.

The Court: Is this case set for trial?

Mrs. Bulgrin: It is set for trial next Tuesday, July 23rd.

Mr. Grossman: I would think if it would delay the motion proceedings that it might be available to have the trial date advanced accordingly.

Mrs. Bulgrin: The Government feels it is a rather simple case factual and I don't think any determination made this week, or even on Monday, should affect the date of trial.

Mr. Grossman: It would subsequently affect the subsequent proceedings, or the course taken by the defendant in preparing his defense. I believe it would be desirable to have the trial date vacated.

[fol. 30-31] The Court: I will continued this matter until tomorrow morning for further proceedings and you be prepared to advise me whether or not you expect to introduce any additional evidence.

Mrs. Bulgrin: I will do so.

The Court: That is, either side.

Mr. Grossman: Yes, your Honor.

The Court: Very well.

(Whereupon, at 4:05 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Tuesday, July 16, 1957.)

[fol. 32] Los Angeles, California; Tuesday, July 16, 1957; 10:00 a.m.

(Other court matters.)

The Court: We will take up the Rios matter now. I do not know whether we are going to finish by noon or not.

Are you ready in your case?

Mr. Grossman: Yes.

The Court: You offered in evidence the transcript?

OFFER IN EVIDENCE

Mr. Grossman: The transcript was offered in evidence.

The Court: It is admitted. That is the transcript of the preliminary hearing of March 12, 1957, before Judge Kaufman.

Mr. Grossman: I would like to clarify one thing at this time as to the stipulation, your Honor.

It is my understanding the Government has stipulated that it intends to use the evidence that was the basis of the State court action in these proceedings in this case.

Mrs. Bulgrin: I think the stipulation was made yesterday, and I think we worked it out to the satisfaction of both counsel, your Honor, with respect to the hearing.

The Court: As I understand, the Government has stipulated that you do expect to use this evidence but you decline to state that you will use only this evidence.

Mrs. Bulgrin: That is correct, your Honor. That was the gist of the stipulation.

[fol. 33] The Court: Very well.

Mrs. Bulgrin: And I believe also, your Honor, that the moving party offered the second transcript (I am not sure) in connection with the legal argument, and the Government offered the preliminary transcript, the transcript of the preliminary hearing on the facts. So both transcripts are in evidence, I believe.

The Court: The moving party here on the legal argument as to his motion offered the transcript of the hearing in the Superior Court which was more or less a ruling by Judge Odemar.

Mr. Grossman: Yes, your Honor.

The Court: And when I did not sustain you in that posi-

tion, the moving party has offered the transcript of the preliminary hearing, and it is in evidence.

Mrs. Bulgrin: That is correct.

Mr. Grossman: Yes, your Honor.

The Court: And you rest with that?

Mr. Grossman: We rest with that.

The Court: Very well.

Do you have any evidence to offer, Mrs. Bulgrin?

Mrs. Bulgrin: May I inquire, is the transcript of the Superior Court hearing also in evidence? Was that also offered by the moving party?

The Court: Is was offered for a limited purpose.

[fol. 34] Mrs. Bulgrin: That is what I understood.

The Court: Now you offer it for every purpose, for all purposes?

Mr. Grossman: No. If the court please, both transcripts are offered in evidence for that limited purpose, that is, the preliminary transcript is offered in evidence for the purposes of the present motion at the factual level to which we alluded yesterday. I don't believe the other transcript contains any additional evidence.

The Court: It does not contain any evidence at all, except it is evidence of the fact that the Superior Court ruled. That is all.

Mr. Grossman: I believe that was already brought to the court's attention.

The Court: Anyhow, I will admit both transcripts in evidence.

(The transcripts referred to were received by the court as evidence.)

The Court: You may proceed.

Mrs. Bulgrin: I would like to call Mr. Beckmann to the stand, please.

[fol. 35] D. W. BECKMANN, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full.

The Witness: D. W. Beckmann; B-e-c-k-m-a-n-n.

The Clerk: Your address?

The Witness: 1239 North Everett Street, Glendale.

Direct examination.

By Mrs. Bulgrin:

Q. Mr. Beckmann, please give us your occupation.

A. I am a police officer of the City of Los Angeles, assigned to Georgia Juvenile.

Q. During February 1957 what detail in that division were you assigned to?

A. To the Georgia Juvenile in the Central Division.

Q. Does that involve work on narcotics cases?

A. Yes.

Q. Now, Mr. Beckmann, have you had an opportunity to read over the reporter's transcript of the preliminary hearing for Tuesday, March 12, 1957, which has been received in evidence and which was attached to the affidavit of Joseph T. Forno in this particular case, 26019?

A. Yes, ma'am.

Q. Mr. Beckmann, are you the officer who testified in that case?

[fol. 36] The Court: I understand there was a stipulation yesterday that if the same questions were asked of these witnesses at this time the answers would be the same.

Mr. Grossman: So stipulated.

Mrs. Bulgrin: So stipulated.

Q. Now, you are the officer who testified at that time, are you not, Mr. Beckmann?

A. Yes.

Q. I would like to ask you a few additional questions. During the time of the events which are testified to, which occurred on February 18, 1957, in connection with the defendant Rios in this Federal case, did you have any contact at all with any Federal officers with respect to the

arrest which you made and the transactions which you testified to?

Mr. Grossman: That is objected to.

The Court: Prior to the arrest?

Mrs. Bulgrin: Prior to the arrest; yes, your Honor.

Mr. Grossman: I wanted to have clarified the time to which she was addressing that question.

By Mrs. Bulgrin:

Q. Did you have any contact with Federal officers in that regard prior to the time you first saw the defendant on that evening around 10:50 p.m.?

A. No.

Q. To your knowledge, Mr. Beckmann, were there any [fol. 37] Federal officers in the vicinity of First and State Streets where this transaction took place prior to the time this transaction took place?

A. None that I know of?

Mr. Grossman: That is objected to on the ground it would be a conclusion of the witness.

The Court: She is just asking if he knew. He said he did not know.

By Mrs. Bulgrin:

Q. In connection with your work as a police officer, Mr. Beckmann, in the Police Department of Los Angeles, have you ever worked with Federal officers at all on narcotics cases?

A. No.

Q. Have you ever worked with any Federal officer in connection with your duties in the vicinity or the area at First and States Streets?

A. No.

Q. What occasioned the presentation of this case to the Federal grand jury after the ruling in the Superior Court across the street, Mr. Beckmann, in this particular case?

A. After the ruling in the Superior Court, approximately a week or two weeks later, I conferred with my divisional commander, Captain Clavis, about the case, and at that time I showed him the arrest reports and discussed the case [fol. 38] with him.

He then called Captain Madden of the Narcotics Division of the Los Angeles Police Department. I then went over and talked to Captain Madden of the Los Angeles Police Department. Captain Madden then looked at the arrest report, and I discussed the case with him going to the Federal Narcotics to present the case.

Q. Whose idea was that? Was that yours or Captain Madden's?

A. Mine.

Q. In other words, did you institute the discussion with Captain Madden?

A. Yes. Captain Madden then called Federal Narcotics and I went over to Federal Narcotics and talked to Mr. Goven. At that time I showed him a copy of my arrest report and discussed the case with him.

Q. One more question with respect to the Exhibit in this preliminary hearing—I believe it is described on the first or second page here—was the exhibit which was involved in that hearing the same article that you picked up off of a taxicab floor, Mr. Beckmann?

Mr. Grossman: Objection, your Honor. This is a conclusion of the witness. This witness didn't testify he picked it up.

Mrs. Bulgrin: I am sorry. That was my mistake.

[fol. 39] Q. Mr. Beckmann, if I may change the question to fit the facts, was the exhibit which is involved in the preliminary hearing the same object which was handed to you by Policewoman Grace on the night of February 18th after you had seen the defendant Rios?

Mr. Grossman: Objection. These questions have already been asked and this testimony elicited in the preliminary hearing.

The Court: I do not recall that particular question.

By Mrs. Bulgrin:

Q. What was your answer?

A. Yes, that was the same object.

Q. Now I would like to ask you a couple of more questions, Mr. Beckmann.

I believe you testified, if I am correct, that you saw the

defendant Rios throw the object which I have just described to you on the taxicab floor, is that correct?

A. He dropped the object.

Q. Now will you tell us exactly all that you did before you saw him throw that object on the floor of the taxicab?

The Court: Is that not covered in here?

Mrs. Bulgrin: I am not quite sure, your Honor. I wanted it to be definite.

The Court: He stated as follows in the preliminary hear-
[fol. 40] ing:

"Q. What did you do, sir?

"A. I appraoched the cab on the right side, with my badge in my left hand and my flashlight in my right hand, and I identified myself to the cab driver and also to the defendant who was sitting in the rear seat.

"Q. What happened at that time?

"A. When I identified myself to the defendant he reached in his jacket pocket, a blue jacket, and dropped a white object on the floor.

"Q. On the floor of the cab?

"A. Yes.

"Q. And did your partner come up by this time?

"A. When he dropped the white object on the floor I jerked the door open and the defendant alighted from the cab.

"Q. What happened next?

"A. When he alighted from the cab I told him he was under arrest for suspicion of narcotics, and grabbed him by the arm."

Mrs. Bulgrin: May I rephrase my question?

Q. In view of the court's reading from the exhibit, Mr. Beckmann, is that all that happened up to that point, to the best of your recollection?

[fol. 41] The Court: All that happened at First and State Streets?

Mrs. Bulgrin: Yes.

The Witness: Yes. That is what happened at First and State Streets.

By Mrs. Bulgrin:

Q. Now, let me ask you one further question in that respect: As the defendant Rios threw the object to the floor of the taxicab, will you describe——

Mr. Grossman: I object.

Mrs. Bulgrin: May I finish?

Mr. Grossman: You used the term "threw." His testimony is "dropped." This has happened two or three times. I believe the witness himself corrected you once before.

By Mrs. Bulgrin:

Q. Let me use the word "dropped." Will you describe the article that fell to the floor?

The Court: No. He said here that he dropped a white object on the floor. That is what he testified to.

By Mrs. Bulgrin:

Q. Will you describe what object the defendant Rios dropped to the floor of the taxicab, please, Mr. Beckmann.

A. When he took the white object out of his pocket, he took it out of his right jacket pocket, and dropped it to the floor of the cab.

I observed him drop the object to the floor of the cab [fol. 42] and shined my light on the object. When I shined my light——

The Court: What was it?

The Witness: It appeared to be a white rubber.

The Court: A condom?

The Witness: Yes.

The Court: Commonly referred to as a contraceptive?

The Witness: Yes, sir.

By Mrs. Bulgrin:

Q. What did it appear to be filled with?

A. With a white powdery substance.

Q. By the way, in connection with your duties had you seen objects of this similar type before?

A. Yes.

The Court: Is that a common method used by heroin pedlars to carry heroin?

The Witness: Yes, sir.

By Mrs. Bulgrin:

Q. Have you been assigned previously to this time to any areas in Los Angeles which are known to the Police Department to be frequented by traffikers in the heroin trade?

Mr. Grossman: Objection, your Honor.

The Court: I think that calls for a conclusion of the witness, "known to the Police Department." I think he can testify as to what he knows the general reputation of the vicinity is.

[fol. 43] Mrs. Bulgrin: Let me ask this question, then:

Q. Are you familiar with the general reputation of the vicinity surrounding First and Flower Streets with respect to the narcotics trade, and particularly the traffic in heroin?

A. Yes.

Q. Will you tell us what the reputation is?

A. First and Flower, which is near Temple and Figueroa, is second only to Fifth and Stanford in narcotics activity.

The Court: Is it bad?

The Witness: It is bad.

Mrs. Bulgrin: I believe that it all.

The Court: Is that one of the places which you keep under surveillance in connection with your duties, First and Flower?

The Witness: Yes, sir.

Mrs. Bulgrin: I believe that is all, your Honor.

The Court: Cross examine.

Cross-examination.

By Mr. Grossman:

Q. Officer Beckmann, during the nine-month period prior to the arrest on the 18th of February in this case, approximately how many narcotics arrests had you made—I think you testified to 22—how many of those arrests had you made in the vicinity of First and Flower?

A. Most of them.

[fol. 44] Q. Do you operate customarily out of the area of First and Flower?

A. That is the area I was assigned to, yes.

Q. In other words, you operate within that area and if there were narcotics offenses going on in some other part of the city that wouldn't be within your assigned area, is that correct? You customarily stay in the vicinity of First and Flower and your experience is primarily confined to First and Flower, is that correct, Officer Beckmann?

A. When I am assigned to that particular area on that particular night, it is.

Q. There have been appreciable periods of time prior to the arrest during which you were assigned to that particular area, is that correct?

A. Yes.

Q. Now, you testified that you are a juvenile officer. Isn't it a fact, Officer Beckmann, that the Los Angeles Police Department has a narcotics division?

A. Yes.

Q. And the function of that department or division, I presume, is to deal with narcotics cases, is that correct?

A. Yes.

Q. Now, the defendant whom you arrested in this case does not appear to be a juvenile, does he?

A. No, he does not.

[fol. 45] Q. At the time you first saw the defendant he didn't appear to be a juvenile, did he?

A. No, he did not.

Q. Nevertheless you proceeded to follow him, and, according to your testimony, make the arrest, and so forth, as testified to at the preliminary hearing, is that correct, Officer Beckmann?

A. Yes, sir.

Q. Now, of the arrest which you made in the area of First and Flower, a large number of those arrests are juvenile arrests, aren't they?

A. No. Most of them are adults.

Q. Now, going back to the events of February 18th, you testified at the preliminary hearing as to your following the taxicab for about two miles, as I recall, and this was because you had once before on one previous occasion

arrested a narcotics defendant entering a cab. When you followed this cab were you in a police car at the time?

Mrs. Bulgrin: Your Honor, I think now counsel is going into the information in the transcript.

Mr. Grossman: I am simply attempting to indicate the time to which I am referring.

Q. Were you at the time of the transaction on February 18th using a police car?

A. Yes, sir.

[fol. 46] Q. An officially marked police car, that is, one that was marked? I am not speaking of one that was owned by the Police Department.

A. How do you mean, "was marked"?

Q. We all know a police car has certain markings.

The Court: No, I do not. They use all kinds of cars.

By Mr. Grossman:

Q. Did it contain any identifying insignia to indicate it was a police car?

The Court: You mean on the outside?

Mr. Grossman: On the outside.

The Court: There is no law requiring that. There is a law requiring traffic cars, or there used to be.

Mr. Grossman: I think that the circumstances of the defendant's conduct, or alleged conduct, would have to be considered in light of all the circumstances.

The Court: Your question is, whether or not the car in which he was riding had any visible insignia on the outside?

Mr. Grossman: Had any visible insignia on the outside; that is right.

The Court: Which would indicate it was a police car?

Mr. Grossman: That is correct.

Q. Did it, Officer Beckmann?

A. No.

Q. Were you in uniform at the time?

[fol. 47] A. No.

The Court: You were operating in plain clothes?

The Witness: Yes, sir.

The Court: And your companion?

The Witness: Policewoman Grace was also in plain clothes.

By Mr. Grossman:

Q. At the time you approached the taxicab, as you testified at the preliminary hearing, did you have any object in your left hand?

A. When I approached the cab, yes.

Q. What was that object?

A. I believe I had my badge in my left hand, my flashlight in my right hand.

Q. You testified that you identified yourself. How did you identify yourself?

A. I first identified myself to the cab driver. I didn't want him to take off.

Q. By "identifying" what do you mean by identifying yourself? I just wanted to clarify that. What do you mean by identifying yourself.

A. I shined my flashlight on my badge and told him I was a police officer.

Q. Now, isn't it a fact that at the time you testified you saw the defendant drop an object on the floor of the cab, [fol. 48] that this was at the time you were identifying yourself and that your flashlight at that time was being used in connection with this identification process, Officer Beckmann?

A. No.

Q. Will you describe just briefly the chronology of events at the time as you identified yourself. You testified that you saw an object drop to the floor. You say it was a white object.

Mrs. Bulgrin: Your Honor, I think we are going into the transcript again.

The Court: Yes, I think we are, but you can cross examine on it.

By Mr. Grossman:

Q. You testified this was at 10:50 at night. I assume that it was dark.

The Court: Are you withdrawing the previous question?

Mr. Grossman: No. I was going to lead up to it.

The Court: You are trying to get at what the sequence of events was when he came up to the cab?

Mr. Grossman: Yes.

Q. You say you approached the taxicab and identified yourself. Would you indicate the events that transpired after that?

A. After identifying myself, my main concern was the defendant.

[fol. 49] Q. To whom did you identify yourself, to the cab driver?

A. I identified myself to the cab driver and it was quite clear that I was also identifying myself to the defendant.

Q. The cab driver was in the front and the defendant was in the rear, but you only flashed and showed your badge to the cab driver, is that correct? I mean you may have intended to show it to both?

The Court: Let him answer.

Mr. Grossman: Excuse me.

The Witness: I exposed my badge in such a way that both could see it, both the defendant and the cab driver.

By Mr. Grossman:

Q. What happened following this identification, as you testified?

A. When I identified myself I was watching the defendant. At that time I saw the defendant reach in his right jacket pocket and drop an object on the floor.

Q. In other words, at the time you approached the cab driver you didn't look at the cab driver, you were identifying yourself to the cab driver and looking at the defendant and you saw him drop something on the floor, is that your testimony?

A. I looked at the driver of the cab, as I remember. [fol. 50] I also looked at the defendant. The sequence of events were such that I looked at the cab driver and identified myself to the cab driver and the defendant at the same time.

The Court: This all happened almost simultaneously?

The Witness: Yes, sir.

By Mr. Grossman:

Q. Where were you standing at the time this identification took place in relation to the taxicab?

A. I believe in the middle of the vehicle on the right side, which would be where the back door and the front door come together, nearly meet. That would be approximately by the front seat on the right side.

Q. In other words, by the door post partitions of the front and back?

A. Yes.

Q. And you say you used this as a means of identifying yourself to the cab driver, whom I presume was sitting on the left side of the front seat of the cab?

A. Yes, sir.

The Court: Obviously we are not going to be able to finish this this morning.

Do you expect to call Policewoman Grace?

Mrs. Bulgrin: I had hoped to.

The Court: Very well. We will continue at 2:00 o'clock. You can return at 2:00 o'clock.

(Whereupon, at 12:05 o'clock p.m., a recess was taken until 2:00 o'clock of the same date.)

[fol. 51] Los Angeles, California; Tuesday, July 16, 1957; 2:00 p.m.

(Other court matters.)

The Court: We will continue with the Rios matter. I think Officer Beckmann was on the stand.

D. W. Beckmann, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross examination (Continued)

By Mr. Grossman:

Q. Officer Beckmann——

The Court: By the way, the record will show the defendant is present in person and by counsel, and was throughout the proceedings this morning.

Mr. Grossman: Yes, your Honor.

Q. Officer Beckmann, have you ever turned over evidence in a narcotics case to the Federal officers prior to the arrest in this case?

The Court: What is the materiality of that?

Mr. Grossman: The Government on direct introduced evidence to show his overall course of dealing, as to whether he had any dealings with Federal officers, whether there was any partcipation.

The Court: In this case.

Mr. Grossman: I think that a question of a course of [fol. 52] ——is material. One of the theories on which we are proceeding here would be that in doing this he was acting as an agent for the Federal authorities, and it is our position that this would be material to determine whether he was in the custom of gathering evidence for the Federal authorities, indicating for whom he was acting in this particular case.

Mrs. Bulgrin: Your Honor, I think if he was not acting in behalf of the Government in this particular case, if he had been so acting, assuming for the sake of argument, in the past, in other cases, it would not be material.

The Court: I do not think it would be material. Since I raised the objection myself, I will sustain the objection.

Mr. Grossman: Very well, your Honor.

Q. Is it not a fact, Officer Beckmann, a condom is a rather common object in the area of First and Flower, aside from any question of narcotics? In other words, this isn't something that is identified solely as a container for narcotics?

It has other uses and is frequently found in this area, is that not correct?

Mrs. Bulgrin: Your Honor, I think that should be objected to.

The Court: That is a rather involved question. You asked whether or not it has other uses and is frequently found in this area. I think your question is complex and compound.

[fol. 53] Mrs. Bulgrin: I would like to make my objection on that ground, and also in this particular case that it was not found by itself. Although it has other uses, it was not found by itself; it was filled with a white powdery substance, and the facts don't support his question.

The Court: That objection is sustained. You may break your question down.

By Mr. Grossman:

Q. Is a condom a common object in the area of First and Flower?

Mrs. Bulgrin: I will make the objection on the ground that in this case it was filled with a white powdery substance.

The Court: The question to me is not understandable. It does not bear any relevancy.

You ask, is it a common object at First and Flower. Do you mean to be found in automobiles full of white powder, on the street, or what?

Mr. Grossman: May I explain my question to the court?

On direct examination this witness testified that this is an object frequently used as a container for narcotics, and I am simply attempting to point out that seeing this object would not necessarily indicate any narcotics because it is frequently used for other purposes, and I was simply attempting to bring out that fact.

I think in light of the question asked on direct examina-[fol. 54] tion as to the identification of the container with the particular contents that this question is pertinent.

The Court: I do not know. I should imagine that the other purposes to which it might have been put should not be in the presence of a policeman and a policewoman.

Mr. Grossman: I was not going to get into that phase, simply the question of the frequency. In other words, this is a common object in that neighborhood.

The Court: Whether or not it is found on the street or what?

Mrs. Bulgrin: I would still object to that.

The Court: Or in public places?

Mr. Grossman: Yes.

The Court: Very well. Direct your question to that, then.

By Mr. Grossman:

Q. Is this the sort of an object that would be frequently found——

The Court: In public places?

Mr. Grossman: I believe it was found in the possession, or allegedly found in the possession, of the defendant, your Honor.

The Court: It was found on the——

Mrs. Bulgrin: Taxicab floor.

Mr. Grossman: He claimed he saw the object dropped, your Honor.

[fol. 55] Mrs. Bulgrin: Your Honor, I would still object to the question, not to belabor the point, but the facts are that it was found filled with a substance.

The Court: Objection sustained.

You are entitled to ask him whether or not it is a common object found in public places abandoned in the vicinity of First and Flower, if he knows.

Do you know?

The Witness: No, I don't, sir.

By Mr. Grossman:

Q. Now, getting back to the circumstances connected with the arrest, you testified at the preliminary hearing that you saw a white object. Was the container itself a white object? Was this a white container?

A. Yes.

The Court: Was this a condom or a toy balloon?

The Witness: A condom.

By Mr. Grossman:

Q. In other words, the object itself was white?

A. It was light-colored.

Q. White color, that is correct.

Mrs. Bulgrin: Excuse me, your Honor. I think the witness said "light color" rather than "white color." I would like to have the record read.

[fol. 56] Is that correct?

The Witness: Light.

By Mr. Grossman:

Q. In other words, when you testified as to a white object you did not mean it was a white object, is that your testimony now?

The Court: He said it was a light object. I do not think that they come in colors or stripes.

Mr. Grossman: I don't know to what extent the court is going to take judicial notice of any of these things——

Q. But what was the size of the object that you claimed to have seen the defendant drop?

A. I was a cylindrical object approximately five inches in length and an inch in diameter, tied on the end.

Q. Was that the object that was identified in the State court proceedings? Was that the Exhibit 1 to which you are referring? Is that a description of Exhibit 1 also?

A. Yes, it is.

Q. Now, from the time you first identified yourself, as you have indicated, to the cab driver, and I believe you stated to the defendant, until you jerked open the door, as you testified in the preliminary hearing you jerked open the door, was there a time interval? Was this a matter of seconds? What was the time interval from the time you first identified yourself until you jerked open the door?

[fol. 57] A. Just a matter of seconds.

The Court: About as long as it would take you to say what you said you said, to see the man drop the object and open the door, is that right?

The Witness: Yes, your Honor.

By Mr. Grossman:

Q. At the time you identified yourself, I believe you testified you identified yourself by flashing your light on your badge, to show the badge presumably to the occupants of the cab, that is correct, isn't it, Officer? I mean that was the means you used to identify yourself?

A. Yes, sir.

Q. While identifying yourself in this manner, thereafter within a matter of seconds prior to the time you jerked open the door, you claim that you saw an object drop at night on the floor of a taxicab, apparently made some identification of the contents of the object, and all this was done under those circumstances at approximately 11:00 p.m. at night, is that your testimony, Officer Beckmann?

A. May I elaborate on this a bit, sir? I can't answer the question. I would have to explain my answer.

The Court: You may explain your answer.

The Witness: It was 11:00 o'clock at night, the area was well lighted with four overhead lights on each corner of the intersection. I shined my flashlight on my badge. I [fol. 58] saw the defendant take the object out of his pocket and drop it. I shined my flashlight on the object. At that time the defendant then opened the door and I reached for the door also, or rather I grabbed the handle of the door, we both did simultaneously. I attempted to open the door to get to the object, he attempted to get out of the cab——

The Court: Was that the first time that you said that he was under arrest, or was it after he got out of the cab?

The Witness: After he got out of the cab.

The Court: It was after he got out of the cab that you said that he was under arrest for suspicion of narcotics?

The Witness: Yes, sir.

By Mr. Grossman:

Q. Now, you stated, just to clarify that last answer, how long after he got out of the cab did you state he was under arrest?

A. When he alighted from the cab I grasped him by the wrist and told him he was under arrest.

Q. In following this cab and stopping the cab that you related in your preliminary hearing——

The Court: Just a moment. He did not testify that he stopped the cab.

By Mr. Grossman:

Q. Well, in stopping behind the cab and then approaching the cab, as you have related, is it not a fact your inten- [fol. 59] tion was to see if you could locate any, what I think you referred to as, stuff or narcotics in the possession of the defendant? Was that not your purpose at that time? That is, you testified you were investigating narcotics, and the question I am asking you is, was not your purpose in following the cab, stopping behind it and approaching the cab, to see if you would be able to uncover any narcotics in the possession of the defendant? Was that not your object?

A. Yes.

Q. And that was not your object prior to the time you testified that you saw any thing on the floor of the taxicab, or an object dropped on the floor? This was the purpose with which you approached the cab at that time, is that not correct, Officer Beckmann?

A. The purpose was, I thought he possibly had narcotics in his possession.

Q. And you intended, did you not, Officer, to conduct a search to determine whether or not, in fact, this was the case, that is, to confirm your suspicions?

Mrs. Bulgrin: Your Honor, I will object to that question on the ground that his intent, in the sense that counsel uses the word there, is not material.

The Court: Sustained.

By Mr. Grossman:

Q. Now, when you jerked open the door and informed the [fol. 60] defendant he was under arrest, you had not at that time taken this object from the floor or made any further examination of it, had you?

A. When the defendant alighted from the cab and I grabbed him by the wrist, I told him he was under arrest, and with my right hand I tried to retrieve the object on the floor.

Q. But you did not retrieve the object to make any further examination at that time, is that correct?

A. No. He kept pulling away from me and I told my partner——

The Court: You what?

The Witness: I instructed my partner, Policewoman Grace, who had come around the back, to pick up the stuff.

Mr. Grossman: Incidentally, your Honor, I notice Policewoman Grace is present in court noting this. I don't know what the custom is. If the court feels that there be no prejudice in having her continue to be present during this hearing as the events transpired as to which they will probably both be questioned I would not bring it to your attention.

The Court: I do not think there is any prejudice. Certainly if there is any she has had an opportunity to read the transcript and her own testimony.

By Mr. Grossman:

Q. Now, your only basis for inferring that the contents [fol. 61] of this object that you saw was a narcotic was the fact that this was a white powder—you testified it was a white powder or light-colored powder that you saw—I mean that was the basis for your identification of this as narcotics, is that not so?

The Court: Which is your question? Is your question, was that only basis, or was that a basis?

Mr. Grossman: Was that the only basis of your identification of this object as a narcotic?

The Witness: No.

By Mr. Grossman:

Q. Was that in addition to the fact that it was seen in this container that you testified to, was that the only basis in terms of identifying this powder, as to what this powdery subsance was, that is, in terms of the appearance of the object itself, was there any other identifying characteristics that labeled it in your mind as a narcotic other than the fact that it was a powdery substance?

The Court: Counsel, maybe the witness understands your question, but I do not.

By Mr. Grossman:

Q. Was there any identifying characteristic of this container or its contents other than the fact that the container was what you have stated it to be, that the contents you stated appeared to be a white powder, was there any [fol. 62] other identification on the object which indicated to you that this was a narcotic?

A. No.

Q. Now, the container itself was not transparent, that is correct, the container itself was a colorless, whitish, or whatever it may be? This was not a cellophane-like container that would be completely transparent, was it?

A. It is transparent. You can see through it.

Q. It was transparent? Light would come through it but it isn't a clear object in the sense that it was cellophane or a window or something like that?

A. If there were a dark object within the container it would have appeared to be dark.

The Court: If there was ink in it you could see that it was black?

The Witness: Yes, sir.

By Mr. Grossman:

Q. Was there a dark object in this?

A. No.

Q. Was there a light object in this, a light powder, and you were able to see the light powder, that is your testimony, is it not, that you were able to see a light object inside of this container?

A. A light substance inside of this, yes.

Q. At the time you got out of the cab, did Policewoman [fol. 63] Grace get out of this cab at the same time?

The Court: Cab?

Mrs. Bulgrin: I don't believe the record said "cab."

Mr. Grossman: Out of the police car. I am sorry.

Q. At the time she got out of the car did Policewoman Grace also get out of the car at the same time?

A. Yes.

Q. Did she approach the cab?

A. Yes.

Q. Will you indicate where she approached, how she approached, what part of the cab she approached?

A. She approached the cab on the left side.

The Court: You were on the right?

The Witness: I approached the cab on the right.

By Mr. Grossman:

Q. Was she opposite you on the left side of the cab? What part of the left side, the front, opposite the defendant, or where on the left side of the cab was she this time?

A. I don't know her exact position.

Q. Could you see? Were you able to see her position at that time?

A. I could probably see it but I don't recall just where she was at that time. I knew she was there.

Q. But you didn't see where she was at the time?

A. I can't say whether I did.

[fol. 64] The Court: At what time? When he identified himslf with the badge originally, when the defendant got out of the car, or when he grabbed him by the arm?

By Mr. Grossman:

Q. At the time you approached the cab and you state that she approached the cab on the left, when she was standing at the left of the cab when you first approached her prior to any other events, you were not able to see what position she occupied at that time, is that correct?

A. I think I was able to see it. I don't recall just what position she was in.

The Court: You do recall that she was someplace on the left side of the cab?

The Witness: Yes, sir.

The Court: Did you speak to her after the defendant got out of the cab?

The Witness: She came around the back of the cab after he got out.

The Court: She came around on your side?

The Witness: Yes, sir.

The Court: And that was when you told her to grab the stuff?

The Witness: Yes, sir.

By Mr. Grossman:

Q. Did she come around the front or the rear of the cab?
[fol. 65] A. The rear.

Q. Prior to this time she was standing on the opposite side of the cab from you, is that correct?

A. She was on the opposite side.

Q. The opposite side of the cab?

A. Yes.

Q. Do you recall whether any windows were open in the cab at the time of these events, the time you approached the cab prior to your jerking open the door?

A. I believe the right rear window was open.

Q. Do you recal that that was the fact?

A. I can't recall for sure right now.

Q. The front window you recall was closed, is that correct?

A. I am not sure of that either.

Q. You are not sure as to the windows?

A. No.

Q. In identifying yourself, do you recall whether you were speaking, in attempting to identify yourself in speaking to the cab driver or the defendant, whether you were speaking through an open window or a closed window at the time and identifying yourself?

A. No, I can't recall.

Q. It is quite possible that from your present recollection at the time you saw this object that you testified [fol. 66] dropped to the floor that the windows of the cab, on the right side were closed? There is nothing you recall at present that would be inconsistent with that, is there?

A. That is correct.

The Court: When the object dropped to the floor you recognized it as a condom?

The Witness: Yes, sir.

By Mr. Grossman:

Q. And at that time you testified that you were identifying yourself—this was as I recall the transcript—you stated, in effect, while you were identifying yourself in the manner you have indicated, that this object was dropped to the

floor of the cab and you identified it at that time as the object in question, or just a few seconds thereafter.

The Court: This has been asked and answered half a dozen times, counsel.

By Mr. Grossman:

Q. When did you say you yourself first had contact with any Federal officer or agency in connection with this case?

A. When I went over to the Federal Narcotics.

The Court: Do you recall the date?

The Witness: No, I don't recall the date, sir.

The Court. Do you recall if it was after the dismissal in the Superior Court?

The Witness: It was.

[fol. 67] The Court: That appears to have occurred on May 10th, so it was after that date, was it?

The Witness: Yes, sir.

By Mr. Grossman:

Q. In identifying yourself to the cab driver, you were detaining the cab that had originally stopped for other purposes, but you did detain the cab beyond the period for which it had originally stopped, I think you said for a signal, you detained it beyond that point, didn't you, prior to the time you saw the object dropped on the floor, you had detained the cab, is that not correct?

Mrs. Bulgrin: Your Honor, I think the transcript speaks for itself on that point.

Mr. Grossman: I don't recall that the specific question was asked.

Mrs. Bulgrin: I believe it was.

The Court: I do not understand the question. You get so many things in there that if a witness answers it you might be saying yes and no to half a dozen things.

Mr. Grossman: I will rephrase the question.

The Court: The witness has testified that the cab was stopped at a signal and that while it was so stopped at that signal he approached it on the right and identified himself.

What you want to know is whether or not the signal turned before the defendant started to get out of the car, [fol. 68] is that what you want to know?

Mr. Grossman: First whether the signal turned prior to the time you say you saw the defendant drop the object.

The Witness: I don't know.

By Mr. Grossman:

Q. Would you say that the time interval that elapsed was just a matter of a few seconds so that it is possible that the signal might not have turned during that interval? In other words, a period of 10 minutes had elapsed obviously.

The Court: Which question are you asking?

Mr. Grossman: I am asking the first question.

Q. Would you say that a period of just a few seconds had elapsed?

The Court: Do you know whether or not the signal changed while you were at the taxicab?

The Witness: No, sir.

By Mr. Grossman:

Q. Have you made any oral or written statements to any Federal officer or agent in connection with this case, officer Beckmann?

A. I have made an oral statement, yes.

Q. Approximately when was that made?

Mrs. Bulgrin: Your Honor, I will object to that question as being irrelevant to this motion and to the testimony here and is improper cross examination.

[fols. 69-76] The Court: Overruled.

By Mr. Grossman:

Q. When was that statement made?

A. After the trial in the Superior Court, after I had gone to my superior officers and then had gone to the Federal Narcotics.

Q. About how long after the trial? Just approximately as best you recollect.

A. Within a month, I believe.

Q. Was it close to a month?

A. Between two and four weeks.

Q. And in the course of that statement you detailed the circumstances of the offense as it occurred in your presence, is that correct?

A. I showed them a copy of my arrest report at the time I made the arrest.

Q. You mentioned an oral statement. You did make oral statements in addition to this, did you not?

A. We talked about it; yes.

Q. You did discuss the case with them?

A. Yes.

[fol. 77] Redirect examination.

By Mrs. Bulgrin

Q. Mr. Beckmann, I believe you stated that Fifth and Stanford had been an area of Los Angeles which was known by you to have a reputation for heavy narcotics traffic during the time in question, is that correct?

A. Yes.

Mr. Grossman: I object. There is no indication of Fifth and Stanford being involved in this case at all.

The Court: This apparently is a preliminary question. It is not material unless it is connected up. If it is not connected up, it will be stricken.

Mrs. Bulgrin: Yes.

Q. Now, were you assigned previous to February of 1956 ——

A. '57.

Q. '56 or '57?

A. '57.

Q. Had you been assigned to Fifth and Stanford previous to that time in connection with your duties as a police officer?

A. Yes, for four years.

Q. Had you had any experience in that connection with the narcotics traffic?

A. Yes.

[fol. 78] Q. Now, during that time had you ever seen a quantity of heroin contained in a contraceptive?

A. Yes.

Q. Was that in connection with your police duties?

A. Yes.

The Court: It is a common method of carrying it?

The Witness: Yes.

The Court: By those who deal in narcotics which come in a powdered form?

The Witness: Yes, sir.

By Mrs. Bulgrin:

Q. And this is based on your own personal experience, Mr. Beckmann, as a police officer?

A. Yes.

Q. Let me ask you one more thing about that: In connection with the contraceptive in this particular case filed with, I believe what you described, as a white powder, you stated it was five or six inches in length, is that correct?

A. Yes.

Q. Will you tell us what standpoint the receptacle or contraceptive was filled with this white powder?

A. The object, as I testified before, was approximately five inches in length and about an inch in diameter and tied on the end, and it appeared to be a soft, pliable object.

Q. To what extent was it filled with the whitish or [fol. 79] lightish-colored powder?

A. It was completely filed within those measurements that I have given.

Q. Would you say it was filled to the extent of five or six inches of the contraceptive?

A. Yes.

Q. By the way, during your previous police duties at Fifth and Stanford, and also at First and Flower, had you had occasion in your work connected with the narcotics traffic to either arrest adults or have some dealings with them?

A. Yes.

Mrs. Bulgrin: That is all. Thank you.

Mr. Grossman: Just one further question.

Recross-examination.

By Mr. Grossman:

Q. Isn't it a fact, Officer Beckmann, that other than the fact that you testified to regarding the container itself as you stated which you have described, that you were unable to determine, to see, any light-colored material, that you were unable to determine the contents of this object at the time you viewed it because the contents were light contents similar in color to the object, is that not a fact, that you could not determine the nature of the contents at the time you first examined this?

The Court: Will you read that question back to me, Mr. [fol. 80] Reporter?

(The question referred to was read by the reporter as follows:

("Q. Isn't it a fact, Officer Beckmann, that other the fact that you testified to regarding the container itself as you stated which you have described, that you were unable to determine, to see, any light-colored material, that you were unable to determine the contents of this object at the time you viewed it because the contents were light contents similar in color to the object, is that not a fact, that you could not determine the nature of the contents at the time you first examined this?")

Mrs. Bulgrin: Your Honor, I might state——

The Court: Do you have any objection to that question?

Mrs. Bulgrin: Yes, your Honor. It is complex and not understandable.

The Court: Objection sustained.

What are you trying to find out?

Mr Grossman: I am simply attempting to get into the question as to what reason he had in viewing this object to determine what its contents were, your Honor. That is, how he could possibly tell by looking at it just what the contents were. That is essentially my question.

[fol. 81] Mrs. Bulgrin: I think the question is what reason he had to think it was heroin, not whether it was heroin.

Obviously he couldn't make a test of it at that moment, he had to use his common sense in connection with his experience in evaluating what the object was, and if there was any question of probable cause it would be that issue.

The Court: What you are trying to find out is whether or not he then knew it was heroin?

Mr. Grossman: No, whether he then had probable cause to determine whether it was heroin.

The Court: That is for me to decide.

Mr. Grossman: I am attempting to determine the basis of the facts as they appeared to him as of that time, rather than in retrospect to determine whether he had probable cause at that time to give a factual basis.

The Court: I do not know what you are trying to find out now. What question do you want to ask this witness? What are you trying to find out? The last question I could not understand you.

Mr. Grossman: Let me rephrase that. I was simply attempting to determine whether his knowledge as to the contents was obtained from events subsequent to his arrest and seizure of the object, or from events prior thereto, because I think that is one of the crucial issues in this matter.

The Court: When did you first find out that it was [fol. 82] heroin?

The Witness: After my partner, Policewoman Grace, gave me the object.

The Court: Did you then test it, field test it?

The Witness: The only field test I gave it was to look at the substance inside of the container.

The Court: And thereafter when did you find out that it was chemically heroin?

The Witness: When the chemist told me it was.

The Court: Does that answer your question?

Mr. Grossman: Yes, your Honor.

Mrs. Bulgrin: That will be all, your Honor.

The Court: The Witness may step down.

(Witness excused.)

The Court: Do you have another witness here?

Mrs. Bulgrin: Yes, I would like to call Mrs. Grace for just a few questions, your Honor.

BEVERLY P. GRACE, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.
The Witness: Beverly P. Grace.
The Clerk: Your address?
The Witness: 115 North Los Angeles Street, Los Angeles.

[fol. 83] Direct Examination.

By Mrs. Bulgrin

Q. Mrs. Grace, what is your business or occupation?
A. Policewoman assigned to Juvenile Division.
Q. During February of 1957 were you so employed?
A. Yes.
Q. Were you the Beverly Grace who testified in a preliminary hearing in Case No. 136978 on March 12, 1957?
A. I was.
Q. Now, on the 18th of February, Mrs. Grace, 1957, at 19:50 p.m. when you were with Officer Beckmann near the vicinity of First and Flower Streets, are you the one who picked up the contraceptive filled with some kind of a whitish or lightish powder from the floor of the taxicab in question?
A. Yes.
Q. At the time you picked it up, Mrs. Grace, was the defendant inside the cab or was he outside the cab?
Mr. Grossman: I object to this line of questioning. That is exactly what she testified to at the preliminary hearing. She testified that she picked it up, and so forth.
Mrs. Bulgrin: I want to find out exactly where the defendant was that that point, your Honor.
The Court: That question was not asked. Objection overruled.

[fol. 84] By Mrs. Bulgrin:

Q. Would you answer the question, Mrs. Grace?
A. The defendant was outside of the cab.
Q. As you picked up the object off the taxicab floor, what did you see immediately before and at the time you were picking it up?

A. A contraceptive, rather long and filled with a powdery substance.

Q. At whose request did you pick it up, Mrs Grace?

A. My partner, Officer Beckmann.

Q. Is that the gentleman who just preceded you on the witness stand?

A. It was.

Mrs. Bulgrin: That is all, your Honor.

The Court: Where was he when he told you to pick it up?

The Witness: He was outside of the cab.

The Court: On the right or left side?

The Witness: Right side.

The Court: Where was the defendant?

The Witness: On the right side of the cab.

The Court: Were they standing still or struggling?

The Witness: They were struggling.

By Mrs. Bulgrin:

Q. Were you also on the right-hand side of the cab?

A. Yes.

[fol. 85] Q. And you reached in through the door?

A. Yes.

The Court: How long have you been a policewoman?

The Witness: A year and a half.

The Court: How long have you been assigned to Juvenile?

The Witness: One year.

The Court: How long have you been assigned to the Narcotics Detail?

The Witness: I am not assigned to it.

The Court: Were you in February?

The Witness: No.

The Court: That was a special assignment?

The Witness: No.

The Court: How did you happen to be on that job?

The Witness: Well, I am assigned to Juvenile Patrol and any police work that comes into our view we take action.

The Court: You were assigned as a partner to Officer Beckmann then?

The Witness: Yes.

The Court: Have you had any experience in the arrest of people for dealing in narcotics other than this case?

The Witness: Yes.

The Court: How many would you say?

The Witness: Approximately five.

The Court: How long were you assigned to the vicinity [fol. 86] of First and Flower?

The Witness: Approximately six months.

The Court: And during that period of time did you become acquainted with the reputation of the area in the vicinity of First and Flower in connection with the sale and dispensation of narcotics?

The Witness: Yes.

The Court: What was it?

The Witness: Very high.

The Court: Do you know whether or not the contraceptive is used frequently or infrequently as a method of carrying powdered narcotics in your experience?

The Witness: I have heard.

The Court: You have not seen it before? This was your first time?

The Witness: This was the first time I had seen powdered narcotics.

The Court: Very well. You may cross examine.

Cross-examination.

By Mr. Grossman:

Q. Officer Grace, when you got out of the police car as you testified, will you just recount briefly your moments from the time you left the police car at First and State to the time in which you claimed to have picked up the narcotics?

A. I approached the cab on the left side, went approxi- [fol. 87] mately to between the two doors, the rear and the front door of the cab. It was a matter of seconds. I walked around to the right side of the cab, around the back of the cab, my partner pointed to an object and told me to pick it up.

Q. Is that all that you recall as happening during that

period? That is all you observed or participated in during that period?

The Court: Which is your question?

By Mr. Grossman:

Q. Is that all that you participated in up to that time? Was that the extent of your participation in this?

A. Yes.

Q. Did you observe any object being dropped on the floor of the cab between the time you approached the cab and you picked up this object, did you observe any object being dropped on the floor of the cab?

A. No.

The Court: Did you see Officer Beckmann display his badge?

The Witness: I don't recall the actual badge. I recall the flash of light.

The Court: You were then walking upon the left side?

The Witness: Yes, sir.

The Court: And when was it when you turned around on the right side?

[fol. 88] The Witness: I don't recall, just a matter of seconds.

The Court: When the defendant started to get out of the car?

The Witness: It was after the defendant started to get out of the car?

The Court: After?

The Witness: Yes.

The Court: Then you got around there?

The Witness: Then I got around there.

The Court: In a hurry?

The Witness: Yes.

By Mr. Grossman:

Q. In other words, prior to the time the defendant got out of the cab you were standing on the other side of the cab?

A. Yes.

Q. Facing toward the defendant, is that not correct? You were facing the defendant at that time? That is, you

were looking at the defendant in that direction at the time, is that not correct?

A. In the general direction.

Q. You did not see any object dropped on the floor of the cab?

A. No.

Q. The first time you saw any object on the floor of the cab was when Officer Beckmann pointed this object to you [fol. 89] which you retrieved?

A. Yes.

Q. At the time you were observing the defendant from the left side you were standing in approximately the same position to the left of the cab that Officer Beckmann was standing to the right, that is, on opposite sides of the cab?

A. Approximately.

Q. At the time you approached, came around to the right side of the cab along behind the back of the cab, over to Officer Beckmann, you say at that time the defendant was outside the cab and there was a struggle going on, is that correct?

A. Yes.

Q. Was Officer Beckmann examining the object at that time?

The Court: At what time? When he was struggling with the defendant?

By Mr. Grossman:

Q. When you came around to the right side of the cab, did you see Officer Beckmann examine this object on the floor of the cab?

A. No.

Q. Did you at any time see Officer Beckmann prior to your picking up this object examine this?

A. No.

[fol. 90] Q. Did you see Officer Beckmann flash a light to the interior of the taxicab? Did you see him flash a flashlight on the floor of the cab while you were on the left side of the—let me rephrase that.

While you were on the left side of the cab did you see Officer Beckmann flash any light in the cab?

A. I don't recall whether it was on the floor. I saw a flash of light.

Q. But that light might have been the flash of light on his badge in connection with the identification, as far as you can recall now?

A. Yes.

Mrs. Bulgrin: Your Honor, I will object to that. If she wasn't there she doesn't know.

The Court: Overruled.

By Mr. Grossman:

Q. At that point you retrieved the object in question?

The Court: At what point, when she saw a flash of light?

Mr. Grossman: No, your Honor.

Q. After you came around to the right, you retrieved the object in question, is that right, at the direction of Officer Beckmann?

A. Yes.

Q. What did Officer Beckmann say to you at the time, that is, in regard to this? What was his statement, do you [fol. 91] recall?

A. As near as I can recall it was, "Pick it up."

Q. Just "pick it up"?

A. Or "Pick the stuff up," I don't recall.

Q. It may have been just "Pick it up"?

A. Possibly.

Q. Now, so far as you were concerned, when you examined the object in question did it have any identifying characteristics of a narcotic about it at the time you examined it or picked it up?

The Court: Do you know?

The Witness: Well, in my opinion it did, yes.

The Court: You have seen heroin?

The Witness: Yes.

The Court: Quite a number of times?

The Witness: Not quite a number. As I said before, about five times.

By Mr. Grossman:

Q. Was there anything about the object or its contents that led you to the view that this was heroin, that is, in so

far as the object or its contents were concerned, was there anything that led you to the view that this was heroin?

A. Yes.

Q. What was that?

A. The object it was in, the shape of the object, the [fol. 92] form — the object, the feel of the object.

Q. Now, correct me if I am wrong, but it was your testimony, was it not, that prior to this time you had never seen any heroin in a container of this type, in a condom, is that not correct?

A. Correct.

Q. But it is your testimony——

A. May I clarify that? I have seen it in a balloon.

The Court: In a rubber balloon?

The Witness: Yes, but not in a contraceptive.

By Mr. Grossman:

Q. This was not a rubber balloon, I believe that was brought out before.

A. Yes.

Q. It didn't appear to be a rubber balloon? There is no question but that it was not a rubber balloon, is that correct?

A. Yes.

Q. Did you make any statements, orally or written, to any Federal agent in connection with this case?

Mrs. Bulgrin: Your Honor, I will object to that question in view of the court's previous ruling on whether he would be entitled to an agent's resume of oral statements.

The Court: Objection overruled.

Mr. Grossman: I will repeat the question.

[fol. 93] Q. Did you make any statements, oral or wirtten, to any Federal agents or officers or personnel in connection with this case?

The Court: Was that a written statement or an oral statement?

The Witness: It was an oral statement.

The Court: Was it taken down stenographically haec verba?

The Witness: No.

The Court: You just talked to the officer?
The Witness: Yes.

By Mr. Grossman:

Q. Did you ever make an official police report on this case, an arrest report?
A. Yes.

The Court: Separate from that of Officer Beckmann?
The Witness: No, it is the same report.
The Court: It is the same report?
The Witness: Yes.
The Court: It was the two of you jointly?
The Witness: Yes.

By Mr. Grossman:

Q. Just to clarify the matter, you never made or showed any written statement of your — to any Federal officer or agent in connection with this case at any time, is that [fol. 94] correct?
A. That is correct.
Q. Do you know for a fact whether any transcription was made of your statements to the Federal officers or was this merely surmise on your part?
A. I surmised it.

Mr. Grossman: At this point, if the court please, I would request that in so far as the Government has any written record of the statements of this witness as setting forth the substance of her statement as opposed to mere notes taken as to the Government's position in connection with her remarks, that these be produced for inspection along the lines indicated previously by your Honor.
The Court: Do you have any further questions of this witness?
Mr. Grossman: Yes.

Q. When was the first time you discussed this case, or any aspect of it, with any Federal officer or agent, approximately, this oral statement that you are referring to?
A. It was approximately three weeks ago.
Q. That is the statement to which you are referring?
A. Yes.

Q. The oral statement to which you are referring?
A. Yes.

Mr. Grossman: That concludes our cross examination of [fols. 95-100] this witness.

The Court: Do you have any other questions?

Mrs. Bulgrin: No, your Honor.

Mr. Grossman: Except to repeat, I believe I have already made that motion in regard to this witness, as to any statements she may have.

The Court: I will rule on that in a moment.

You may step down.

(Witness excused.)

The Court: Do you have any other witnesses, Mrs. Bulgrin?

Mrs. Bulgrin: No, your Honor.

The Court: Do you have any witnesses?

Mr. Grossman: No, your Honor.

[fol. 101] D. W. Beckmann, recalled as a witness by and on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

[fol. 102] The Court: You have been sworn before.

The Witness: Yes, sir.

The Court: Keep in mind, counsel, that your interrogation here is limited to impeachment.

Mr. Grossman: Yes, your Honor.

Cross-examination. (Continued)

By Mr. Grossman:

Q. Officer Beckmann, refreshing your recollection a bit, did you open the door of the cab prior to the time or subsequent to the time the white object was dropped on the floor of the cab?

The Court: That question has been asked and answered. It is not an impeaching question. He has testified concerning that.

Mr. Grossman: May I show this to the witness before questioning him in regard to it?

The Court: I do not mean to infer that you do not know what impeachment is about, but in the matter of impeachment I may suggest to you that I have to continually remind lawyers of much experience that the matter of impeachment is to determine whether or not this witness made a statement at some other time contrary to the statement he made on the witness stand in this case. Consequently you have that report and you can ask him whether he did or did not say such-and-such, something which is contrary to his present testimony, and that is it. Then [fol. 103] I have to decide whether he is telling the truth then or now. And it has to be a statement which is contrary, otherwise it is not a proper impeaching question.

Mr. Grossman: Thank you, your Honor.

Q. Did you state in your police report in this matter as follows:

"When Officer Beckmann identified himself to arrestee, arrestee reached inside his right jacket pocket extracting a white object. When arrestee did this Officer Beckmann opened the cab door and observed the arrestee drop the object to the floor by his feet."

The Court: Do you want to show him the report? He is entitled to see it.

(The document referred to was passed to the witness.)

The Witness: Yes.

The Court: Is that all?

Mr. Grossman: May I question the witness regarding the veracity of that statement?

The Court: No.

By Mr. Grossman:

Q. Officer Beckmann, did you state in your police report at the time of your police report as follows:

"Arrestee attempted to alight from the cab. At this time Officer Beckmann attempted to retrieve the [fol. 104] object dropped on the floor. Officer could see at this time that the object was a rubber condom containing a large quantity of a powdery substance which

resembled heroin. Officer Beckmann then informed arrestee he was under arrest for suspicion of narcotics."

The Court: Do you want to see the report again?

The Witness: No. I recall that.

The Court: He says he made that statement.

Mr. Grossman: That concludes our cross examination.

The Court: You have no further questions of this witness?

Mr. Grossman: No further questions at this time.

The Court: Do you have any questions?

Mrs. Bulgrin: Yes, your Honor.

The Court: The record will show that the police report heretofore handed to defense counsel is now returned to the Assistant United States Attorney.

Mrs. Bulgrin: Thank you, your Honor.

Redirect examination.

By Mrs. Bulgrin:

Q. Mr. Beckmann, Mr. Grossman just asked you if you had made the statement:

"When Officer Beckmann identified himself to arrestee, arrestee reached inside his right jacket pocket [fol. 105] extracting a white object. When arrestee did this Officer Beckmann opened the cab door and observed the arrestee drop the object to the floor by his feet."

And I believe you answered that you made that statement in your arrest report.

A. Yes.

Q. Will you please explain the making of that statement in connection with the facts?

The Court: What is there to explain?

Mrs. Bulgrin: If I may state, your Honor, I don't know if there is any discrepancy—I don't believe so—between this report and the officer's testimony, but obviously Mr. Grossman has asked it on that basis, and I think the witness is entitled to explain the basis of making this particular statement.

Mr. Grossman: If the court please, I think that is for your Honor to decide.

Mrs. Bulgrin: There is no other reason for Mr. Grossman to ask these questions and it can't stand unexplained.

Mr. Grossman: The court ruled that he would determine if there is any conflict and I don't see what further can be gained at this time.

Mrs. Bulgrin: I think what Mr. Grossman is driving at, your Honor, is, "When arrestee did this Officer Beckmann [fol. 106] opened the cab door and observed arrestee drop the object to the floor by his feet." Now, there was some testimony here as to the sequence of events in seeing the object drop to the floor and the opening of the door, and I don't know whether this means the officer opened the door at that time or just pulled it further open.

I would like the officer to explain the reason for the facts that he placed in this particular statement. I think he is entitled to do that, your Honor.

The Court: What is the ground of your objection?

Mr. Grossman: That this is not proper redirect, and also immaterial.

Mrs. Bulgrin: It isn't redirect, it is cross examination in a sense.

The Court: Whatever the objection is, it is sustained.

If you did not consider the statement to be an impeaching statement or contrary to his statement on the witness stand, you should have then objected.

Mrs. Bulgrin: Well, your Honor, I don't have the transcript before me.

The Court: You have a memory.

Mrs. Bulgrin: I assumed Mr. Grossman is entitled to ask it and then argue that it is impeaching, but I certainly don't think it should go unexplained.

The Court: Let us proceed.

[fol. 107] Mrs. Bulgrin: I would ask the same question with respect to the other statement, your Honor.

Q. Mr. Beckmann, Mr. Grossman asked you if you made the statement:

> "Officer could see at this time that the object was a rubber condom containing a large quantity of a powdery substance which resembled heroin."

I believe you stated you made that statement. Now will you please explain whether this was the first time that you saw that the object was a rubber condom containing a large quantity of powdered substance which resembled heroin, or whether you had also seen that such was the case previous to that?

The Court: Previous to what time?

Mrs. Bulgrin: Previous to the time just following the previous sequence where it says the officer attempted to retrieve the object dropped to the floor.

Mr. Grossman: Objection, your Honor, on the same grounds as previously stated. Also on the ground that this is a leading question and somewhat confusing.

The Court: The objection is sustained.

Mrs. Bulgrin: That is all I have.

The Court: Step down.

(Witness excused.)

[fol. 108] The Court: Any further testimony?

Mr. Grossman: No further testimony.

Plaintiff and Defendant Rest

The Court: The defendant rests?

Mr. Grossman: Yes, your Honor.

The Court: The Government rests?

Mrs. Bulgrin: Yes.

The Court: Are you ready for a ruling?

Mr. Grossman: We would like to have a few moments for argument, your Honor. The defendant would like to present a very brief argument, if it is possible to do so at this time.

The Court: On the facts?

Mr. Grossman: On this phase, yes, the second phase which has not been argued heretofore.

The Court: Very well.

Mrs. Bulgrin: I might wish a few words of rebuttal, but they would be very few, your Honor.

The Court: Proceed.

Argument by Mr. Grossman

Mr. Grossman: May it please the court, at the outset I wish to renew the reservation made yesterday by defend-

ant at the time the second phase of this matter was taken up, to the effect that the defendant, in going into the factual side of this after the adverse ruling of the court as to the preclusion of that by the prior State ruling, is not waiving any objections he has to the prior ruling of the court on the other phases of this matter.

[fol. 109] Secondly, by way of preliminary statement, your Honor, I urge and ask the court, in considering the defendant's motion to inspect the grand jury transcript, that that motion be viewed in light of the Jencks decision and the fact that the statements therein transcribed were statements by witnesses who have been on the stand here who testified at the trial of this case who are going to be key witnesses in this case, and it is our position that the Jencks rule lends further support to the motion to inspect the grand jury transcript as it reflects statement of complaining witnesses.

In view of the limited scope of this motion, I have not made a request to examine that transcript at this time, but I wish to urge this on the general motion as a whole.

The Court: I do not understand you.

Mr. Grossman: Our position, your Honor, in connection with our motion to inspect the grand jury transcript is that in so far as the Jencks case will be pertinent, or would be pertinent to any subsequent proceedings, that our failure to request the grand jury transcript at the present time shall not be deemed a waiver of our right to request that statement under the Jencks rule, despite the fact that it was not produced at this hearing as a statement by the witnesses here.

The Court: Are you now withdrawing your request to inspect the grand jury transcript?

Mr. Grossman: No, your Honor. I am merely stating [fol. 110] that the mere fact that we have not asked the court to delay these proceedings while we examine the grand jury transcript under the Jencks rule in connection with this motion, as a transcript of statement of these witnesses, is not to be deemed a waiver of any right we might have in the event the action were to come to trial, to make a request under the Jencks rule for the statements heretofore produced today, and in addition to that the grand

jury transcript as a statement coming within the Jencks rule.

The Court: Your position is that you are not now pressing your motion for the grand jury transcript but you wish that deferred?

Mr. Grossman: We are not now pressing it on that ground, on the ground of the Jencks decision, your Honor, not on that basis.

The Court: Do you want the grand jury transcript today or not?

Mr. Grossman: No, we are not demanding it at this time.

The Court: Very well.

Mr. Grossman: But I believe, I say the reason for my reservation is to this extent, if your Honor deems it pertinent to the motion to quash, or feels there is any issue on that motion to quash, which could be resolved by this, but I am not pressing it at the present time because it is my understanding from what has transpired here that it is quite [fol. 111] apparent that the indictment was, in fact, based on essentially this evidence. So should the court determine that the evidence was illegally obtained we then believe that the motion to inspect the grand jury transcript at that point may again become pertinent as a means of determining whether this was the evidence before the grand jury. But since this question of illegality is the one now before the court we are not pressing it at this time.

I hope I make myself clear to the court.

The Court: No, you do not. I asked you the pointblank question and you said no, you did not want the grand jury transcript now.

Mr. Grossman: No, your Honor. I stated that in urging our right to examine the grand jury transcript at this time we are not urging it and we have not urged it in our memorandum at this time on the basis of the Jencks case.

The Court: You move to put your motion to inspect the grand jury transcript off calendar?

Mr. Grossman: No, I want to retain it on the calendar.

The Court: Do you want a ruling today?

Mr. Grossman: Yes, we would like to have rulings on all of those matters, reserving our right to renew the motion to isnpect in the event a trial of this case were had, under the Jencks ruling. I believe at that point, if the witness

were put on the stand at the trial, at that point we would [fol. 112] wish to renew our motion to inspect the grand jury transcript.

I just wish to make it clear as to what our position will be in the future on that, that is all.

The Court: Very well.

Mr. Grossman: Now, the facts in the present case as adduced before this court, which includes the testimony at the preliminary hearing, I believe bear out very well the reference by Judge Odemar at page 3 of the transcript, where he states, ". . . what in the world is the use of our having a Constitution and having rights if they are meaningless?"

Now, I recognize at the outset that this is a narcotics case. Narcotics cases are very serious cases. We wouldn't attempt to minimize the importance of them to this court.

But I wish to call the court's attention to the concluding statement which we have from Judge Youngdahl, to the effect that while it is quite true that the narcotics traffic must be stamped out, it is equally clear that that traffic must be stamped out in a constitutional manner. That is the effect of Judge Youngdahl's statement, but it must be wiped out in a manner consistent with the protection of our Constitution, and that is precisely the position we are urging here.

The Court: What is unconstitutional about this?

Mr. Grossman: It is our position, in answer to the court's question, just to make it clear——

The Court: Before you answer that question, I under- [fol. 113] stand Judge Odemar's ruling to be that the search and seizure was unlawful because there was no reasonable ground on the part of the arresting officer to suspect that the defendant was then engaged in the commission of a crime.

Mr. Grossman: That is correct. And that there was no valid arrest accompanying this as a means of supporting it, your Honor.

It is our position, as I argued previously—I will not repeat that here—that, first of all on constitutional grounds, as well as other grounds, we have already urged to the court that that determination by Judge Odemar is con-

clusive on this court for the purposes of the present motion, and that this court, in fact, has no authority to proceed de novo because that in itself is sufficient ground to compel, and compels, the granting of this motion.

However, the court having seen fit to deny the motion on that ground, we again raise a second constitutional point, at a factual level to this extent, and that is aside from the conclusive effect of Judge Odemar's decision, and from the effect of an adjudication under Cahan, of the fact that the defendant has already been subjected to prior proceedings and is now being subjected to additional proceedings on the same search and seizure point previously determined, that additionally under the facts of this case, when the ruling of law of this court was made in [fol. 114] failing to follow Judge Odemar's decision—that is, to regard it as conclusive—that additionally when the facts of this case are considered and the nature of the search and seizure considered, that this additional ground is an alternative, and if the first ground were correct there is no need to consider the second.

But on this alternative ground, the facts here when considered in light of the legal principles which we have heretofore argued, namely, the problem of condoning unlawful acts, and so forth, are such as to require the sustaining of Judge Odemar's position, not only because of their conclusive effect but also because of the underlying facts of the search and seizure, and that for the Federal court to sanction this conduct in light of the prior decision, coupled with the underlying facts of the case, is an additional consideration that it is equally clear on this additional ground that the motion should be granted.

In that regard I wish to refer briefly to the summary of the facts which show substantially as follows:

A juvenile officer, not a narcotics officer but a juvenile officer, seizes someone whom he doesn't know at all, has no direct knowledge of him (and that was his testimony at the preliminary hearing) sees someone get into a cab, a yellow cab, at the vicinity of First and Flower, which is certainly a common act, I might say. I have done that myself and I hope I will not find myself getting picked up for doing so.

[fol. 115] The Court: Coming out of a rooming-house at First and Flower and getting into a taxicab?

Mr. Grossman: I don't believe there is any testimony at all regarding the details, as relating to the place from which he had come out of, or the origin of the defendant in treating this as a suspicious circumstance, your Honor. I don't believe there is any testimony as to that nature of it. I don't believe there is any statement that anyone saw him coming out of a building which in itself was the basis for suspicion.

The Court: Let us say that he did not come out of any building, then.

Mr. Grossman: That this was not a basis for the arrest, your Honor.

That seeing the defendant get into a cab in this area and looking around before he got into a cab;

That Officer Beckmann, accompanied by Officer Grace, then followed the defendant for some two miles and pulled up behind him when the cab stops for a traffic light;

They come up to him, and while there is a conflict of testimony at this point, I think it is clear, first of all, that the officer was investigating narcotics—this was all one transaction, one essential investigation—and that in so doing his own testimony is that he saw an object, first that he saw the defendant reach in and take an object out of his pocket, or out of his jacket, and in the arrest report, at least, [fol. 116] his testimony was that he thereupon jerked open the door of the taxicab and that then the defendant dropped the object.

He testifies this all took place in a matter of seconds. He testifies this took place while he had the flashlight shining on his badge.

Then, as I recall, there is some testimony to the effect that he flashed the light on the floor of the cab, but I believe he also testified this happened in seconds when he was identifying himself late at night.

He testified that there was some light at the intersection, but that all this happened in a matter of a split second, because the next thing he states is that there was a struggle, a chase, and so forth, and in this matter of split seconds he suddenly determined that this must be a case involving possession of narcotics, the object here must have contained

a powder, or at one point he stated he didn't discover this until after he subsequently examined it after the defendant apparently had been placed under arrest, after he had told the defendant he was under arrest and this pursuit followed.

Now, from the basis of this, and I might point out the other officer certainly testified that she did not see any object being dropped to the floor, although she was on the opposite side of the cab from Officer Beckmann, presumably they had a similar view, and on the basis of this rather flimsy [fol. 117] episode the defendant is arrested and taken into custody, and so forth, following a course of conduct in which we submit, your Honor, that essentially the search so begun once the officer approached the cab and identified himself, first identifying themselves to let the cab driver know that they were police officers and they identified themselves, we submit, as a part of this overall specific pattern.

This was even prior to anything being dropped on the floor. We submit it was even subsequent to the statement as to anything being dropped on the floor, which itself is a bit hazy to say within a matter of seconds a condom is dropped on the floor, or an object is dropped on the floor, that the officer having probable cause to believe it a narcotic —in effect this all seems rather flimsy.

Also at the time, not knowing anything about the defendant, the officers came up to the cab and essentially instituted a search and seizure.

Now, it is our position, your Honor, that under such circumstances the search and seizure is unlawful, and that in any event these facts compound the effectiveness of our previous point, which was urged independently of the Cahan ruling, having been made by the State court it is not for this court to reopen it, but the court having nevertheless rejected that ground as an additional ground we submit that on the evidence before the court that if the search and [fol. 118] seizure is to have any validity at all in narcotics cases—and we don't believe there is any different application in the rule in narcotics cases—we submit that the motion to suppress should be granted.

We also submit and urge again to your Honor that the indictment should be quashed, and we believe that if your Honor is of the view for which we are urging as to the evidence coming in on an illegal search and seizure, that an

inspection of the grand jury transcript will reveal beyond question that it was the testimony of Officers Beekmann and Grace that led to the indictment, and we therefore seek to dismiss or quash the indictment.

These, then, are the grounds of our motion, namely, first, that the State court having made the determination, the defendant having gone through this, the police having failed to sustain the legality of the search, that this search should not be used as a vehicle for circumventing Cahan and that that would violate the constitutional rights of the defendant.

Secondly, that when all the foregoing are coupled with the facts of this case, and the fact that the officers here were essentially coming out searching a cab because the defendant got into it in a particular neighborhood, if that is going to be sufficient basis for a search and seizure then the right against search and seizure means very little.

This is an additional ground coupled with the other be- [fol. 119] cause all of these have to be taken into account in our second point to couple the facts with the legal position because our second point is that it is a violation of due process, and that that violation of due process is heightened under the facts of this particular case, although we also believe that the factual determination is something that could not be gone into.

But at this factual level and on this basis I might say that the Daniels caes would not be controlling because in so far as the court is going to consider the facts and consider the effect of the State court ruling, or whether it is going to be considered binding, this case has to be considered on its own facts. And it may be that in the Daniel case, even though the court no doubt ruled against the defendant, on our first ground which we still present to the court, which was rejected here, but this second ground, that the facts and the legal principles, coupled with the nature of the search and seizure is an additional basis here, and on that ground we submit the Daniel case, which the court considered, I believe, on a reconsideration, should not be regarded as controlling here in any event.

These, then, are the two grounds of our motion, one of which was rejected by the court, and the second ground which we are urging here and in the additional light of the facts I urge the court to grant our motion.

[fol. 120] I will not burden the court by a detailed resume of the evidence, but I do wish to call the court's attention to the fact, as Judge Odemar stated, if the right against search and seizure without warrant is to have any meaning whatever, certainly in this type of situation it should be sustained.

I wish to point out again that if the Government comes back, as they no doubt will, and says, well, this isn't a "silver platter" case, in addition to the relevancy of the argument we advanced in connection with out initial argument, I wish to call the court's attention again to the fact that none of the cases cited by the Government have held that the "silver platter" doctrine is going to be applied in a situation when you have the compounding elements here, namely; a prior State court determination, plus an unlawful search and seizure. We submit such a situation participation should not be required.

Finally, your Honor, in concluding this, I wish to state that in so far as we have cited this Gambino case in our memorandum, dealing with a case where they held that the State officers, since they were seizing evidence that could not be used in any State proceedings, were acting as Federal agents, that is the case relied on by Judge Mathes, and here too we submit, your Honor, as an additional point that since this evidence would have been admissible beyond any question under the State court's ruling in any State court proceeding, the only real basis [fol. 121] for the seizure, the only basis for this seizure, would be its use which is being sought here in a Federal court proceeding, and as to that extent, aside from any question of conclusion, and so forth, which at least, in so far as it is open here, may not directly appear on the record, we submit that these officers could not have been acting as State officers because under Cahan they would have been seizing evidence that could not have been used in a State court.

The only other alternative is that they were acting as Federal officers, and we submit on that basis, your Honor, as held in the Gambino case, as held in the Proctor and Hall case, that this court should not sanction such a course of procedure.

Thank you very much for the extensive time which you have given us on these motions.

The Court: That is what I am here for. I am not to be thanked.

Do you wish to argue, Mrs. Bulgrin?

ARGUMENT BY MRS. BULGRIN

Mrs. Bulgrin: Well, I know it is getting late, your Honor, but I noticed in this transcript so far as the defendant across the street was concerned that the ruling was unfavorable. I would like to point out one thing, your Honor. I think that the whole point of the fact of this picking up of the narcotic has been missed in Mr. Gross- [fol. 122] man's argument and, with all due respect, by the court as well as the people across the street.

In this case, your Honor, I think it is significant that the heroin was abandoned by the defendant before he jumped out of the taxicab and before he was placed under arrest and before the officer took any steps which could be said to put him under arrest. I believe it was the right of the police officer to pick up anything he had dropped on the taxicab floor, and therefore I don't believe that there was a search and seizure which would be within the purview of the Fourth Amendment. I have placed that point in my memorandum.

But in this case of course the State court's decision is not binding on this court. The Government was not a party to that action, and I think that even the arrest, the subsequent arrest where the officer said, "You are under arrest," as the man tried to break away, could be said to be lawful, your Honor.

There the officer had seen a familiar object to him, an object which he had seen before in the course of his duties, which was the contraceptive filled with a whitish powder, which is the normal package used to carry heroin, and at any event we urge that there was an abandonment of the object here and therefore the defendant's rights weren't violated. He threw it overboard and left the premises, so to speak. Therefore he can't make any complaint.

[fol. 123] If it had been taken off his person by the officer before he placed him under arrest, before he had any reason to believe it was on his person, that would be

an entirely different thing. But the officer saw it on the floor of the taxicab.

I won't waste the court's time with respect to the Gambino or Proctor and Hall decisions. The Government urges that there was no Federal participation here, assuming it was an unlawful search and seizure. As I stated before, the Proctor and Hall case was prior to your Daniel's decision on the motion to suppress, and I did not have an opportunity to give the law which is in my memorandum to Judge Mathes. The motion was made in the middle of the case. It put us at a disadvantage.

The Court: Very well.

Mrs. Bulgrin: We will rest without any further argument.

MOTION TO INSPECT GRAND JURY TRANSCRIPT DENIED

The Court: The motion to inspect the grand jury transcript is denied.

MOTION TO QUASH INDICTMENT DENIED

The motion to quash the indictment is denied.

There remains now to determine the motion to suppress.

The first ground upon which counsel for the defendant stands is that there has been a final decision by the State court of California holding that the search and seizure was contrary to the laws of the State of California and that that is binding on this court.

[fol. 124] There have been no cases decided in the Federal system where there has been a previous decision by a State court.

Mrs. Bulgrin: Judge East decided one up North, your Honor.

The Court: I mean there have been no reported cases in the higher courts. I decided one too, for that matter.

But I think in this case that I am bound with respect to the decision by the State courts by the doctrines of the Parker case in 183 F(2d), the Anderson case in 237 F(2d), both Ninth Circuit cases, and the Lustig case in 338 U. S., all of which bear on the question and all of which have as the underlying philosophy that unless there is Federal participation shown then the search by the State officers, even

though it be unlawful, does not permeate the Federal proceedings. For that reason I adhere to my ruling in that respect.

And for the further reason that I am of the view that where the question is raised that the United States has the right, if it desires, to have its own courts determine as a question of fact whether or not the search and seizure was or was not lawful. In this case evidence has been produced and I deem it my duty to make my independent decision regardless of the decision of Judge Odemar.

I have read the transcript before Judge Odemar, which was taken before Judge Kaufman on the preliminary hearing, and the transcript of Judge Odemar, and he apparently [fol. 125] bases his whole decision of unlawful search and seizure on the ground that he did not think it reasonable that a person would think a felony had been committed under the circumstances described in Officer Beckmann's and Officer Grace's testimony in the preliminary hearing.

There has been additional testimony before this court which was not in the transcript, and approaching the problem in the same manner that it was approached by Judge Odemar, that is to say, to determine whether or not there was reasonable ground for an arrest, I must reach the conclusion that there was reasonable ground for the arrest, that there was nothing unreasonable about it.

We have here this situation: (1) The general location at which the defendant was first seen by the officers that night, which has a general reputation as being a hangout for narcotics peddlers and (2) the suspicious actions of the defendant.

Judge Odemar did not pay much attention to them, but when placed in that vicinity, with the taxicab waiting in a parking lot for a man to come out of a building, look up and down one street and then go to First Street and look up and down First Street, and then go to the parking lot, would arouse the suspicion of any conscientious officer.

No arrest as yet has taken place, no deterrents had been placed at that time upon the defendant, but the officers [fol. 126] followed the defendant in a taxicab to the intersection that was testified to, a brightly lighted intersection, and there the taxicab was stopped by a traffic light. The officers did not stop the cab, they did not do anything to

the defendant. The officer approached the cab from his right, Officer Beckmann, and Officer Grace from the left. The officer identified himself as a police officer. That is all uncontradicted.

The defendant here could have called the taxicab driver if he wanted to contradict the testimony and he need not have even put the defendant on the stand, but it is absolutely uncontradicted that the officer did identify himself as a police officer with a flashlight and showed his badge. That almost simultaneously the defendant dropped this object out of his pocket, took it out of his pocket and dropped it on the floor.

Now, the officer testified that in his experience it was common knowledge that a container used for the carrying of powdered narcotics, to-wit, heroin, was a condom or a contraceptive. He observed that it was such an object and that it was filled with some kind of a lightish powder.

It was then that he opened the door, or started to, and at the same time the defendant attempted to get out of the cab. It was then that he opened he door, and not until after he had observed that under all of these circumstances, and under the circumstances of the defendant attempting to get out of the cab, that the officer then placed him under arrest. [fol. 127] It seems to me that it is highly reasonable that any conscientious police officer would be justified in reaching the conclusion that the defendant was then engaged in the commission of a felony, to-wit, the transportation of narcotics, or the dealing in narcotics in some manner or other, and he was justified in then placing the defendant under arrest.

Actually I agree with Mrs. Bulgrin, the Assistant United States Attorney here, that there was no search. This was a public vehicle. The defendant before Officer Beckman arrested him severed himself, or attempted to, from this package and abandoned in on the floor of the public vehicle where it was retrieved by Officer Grace and where the actions of the defendant were observed by Officer Beckmann.

So on those two grounds, the circumstances under which all of the actions of the defendant and the officers occur, the location, the movement, the dropping of the object, the

object was a contraceptive commonly used by peddlers and people dealing in narcotics, the attempt to get out of the car—all before the officer placed him under arrest—indicates to me that the arrest was reasonable and the search and seizure was lawful.

And if that is not sufficient, I would base by decision on another ground, that there was no search, that there was an abandonment here by the defendant. He was not placed under arrest, he had not been advised that he was under [fol. 128-135] arrest, he had simply identified himself to him as a police officer.

Motion to suppress evidence is denied.

These circumstances surrounding this transaction must enter into every situation, whether it is a police officer performing him duty or whether it is any of us doing the thing that we ordinarily do, and to hold that these circumstances here made it unreasonable for Officer Beckmann and Officer Grace to arrest this defendant would seem to me to require me to hold that it would be unlawful if an officer observed a bald-headed man to go in a wig store and then come out with hair showing under his hat, to assume that he hadn't gotten a wig in the store. In other words, all the circumstances lead me to but one conclusion, and the motion to suppress the evidence is denied.

[fols. 136-153] COLLOQUY

Los Angeles, California; Tuesday, July 23, 1957; 10:00 A.M.

(Other court matters.)

The Clerk: Case No. 26019, United States v. Jose Terrones Rios for trial.

Mrs. Bulgrin: Ready, your Honor.

Mr. Grossman: Ready, your Honor.

The Court: The record will show the defendant is present in person and by counsel.

The clerk will fill the box.

[fol. 154] The Court: Very well. Call your first witness.

Mrs. Bulgrin: Officer Carter.

JACK OLIN CARTER, called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.

The Witness: Jack Olin Carter.

The Clerk: Your address, please?

The Witness: 150 North Los Angeles Street.

Mrs. Bulgrin: Your Honor, I have a little problem with my evidence. The witness who has brought it over——

The Court: Is it sealed?

Mrs. Bulgrin: This is in an envelope and then there is an inner envelope, your Honor. The witness does not want [fol. 155] to leave it in evidence. I would like to straighten that out. I have to have it marked for identification and will offer it, your Honor.

The Court: Go ahead with your case. We will cross that bridge when we get to it.

Mrs. Bulgrin: In that event I will have this envelope, which has a No. 189270, and apparently a wax seal on the face of it, marked for identification as Government's Exhibit No. 1.

(The envelope referred to was marked Government's Exhibit No. 1 for identification.)

Mrs. Bulgrin: I would like to hand this to the witness.

(The exhibit referred to was passed to the witness.)

Direct examination.

By Mrs. Bulgrin:

Q. Mr. Carter, I will hand you Government's Exhibit 1 for identification ——

First let me ask you, what is your occupation?

A. Police officer for the City of Los Angeles assigned to the Scientific Investigation Division as a chemist.

Q. Will you please give us a brief resume of your educational qualifications as a chemist, Mr. Carter?

A. I studied three years at the City College of San Francisco in the major of general chemistry and graduated with a degree of Associate in Arts.

I studied three years further at the University of Cali- [fol. 156] fornia in the major of forensic chemistry or

technical criminology and graduated with a degree of Bachelor of Science.

I was employed approximately one year as an industrial research and control chemist prior to joining the police department. I have been a police officer nearly four years and in my present assignment slightly over one year.

Mr. Grossman: If the court please, I failed to stipulate that this witness is an expert chemist, as far as that is pertinent here.

Mrs. Bulgrin: We would accept that stipulation, your Honor.

The Court: Very well. The stipulation is approved.

By Mrs. Bulgrin:

Q. Mr. Carter, have you qualified as an expert before?

A. Yes, ma'am.

Q. Will you please look in Government's Exhibit 1 for identification ——

The Court: Have you ever seen that envelope before?

The Witness: I have.

By Mrs. Bulgrin:

Q. What do you find inside, Mr. Carter?

A. There is a smaller manila envelope within the larger envelope.

The Court: What is the large envelope?

Mrs. Bulgrin: No. 1 for identification.

[fol. 157] The Witness: Government's Exhibit 1 for identification.

The Court: Yes, but what is it?

The Witness: It is a property envelope such as is generally used for the keeping of evidence.

The Court: Is it now unsealed?

The Witness: It is.

The Court: And who unsealed it?

The Witness: I did, your Honor.

The Court: And it was in the possession and sealed until you unsealed it?

The Witness: No, sir. It was sealed when I obtained it at the Central Property Division.

The Court: That is what I say, it was sealed until you unsealed it?

The Witness: That is correct.

The Court: And when you unsealed it, after you unsealed it, did it have the same contents that it has now?

The Witness: It does.

The Court: What are its contents?

The Witness: Within the larger envelope is a smaller manila envelope and within that is a rubber sheath containing 60 grams, or 2.13 ounces of a whitish powder.

By Mrs. Bulgrin:

Q. Did you subject that powder to a chemical analysis?

A. It was subjected to a series of chemical analyses.

[fol. 158] Q. Did that include a microscopic analysis?

A. It did.

Q. Did you come to a conclusion as a result of these analyses as to the substance of the material contained in the rubber sheath?

A. I did.

Q. Will you please tell us what your opinion is?

A. In my opinion the powder contained within this rubber sheath contains the narcotic diacetylmorphine, more commonly referred to as heroin.

Mrs. Bulgrin: Your Honor, I would like to have this rubber container and the whitish powder marked as 1-A.

The Court: How many grains is that?

The Witness: I would have to figure it out, your Honor.

The Court: I have forgotten how many grains in an ounce, 437, I think.

The Witness: In an ounce, yes. It would be slightly over 800 grains.

The Court: Then that would be 1019 grains?

The Witness: Yes, sir.

Mrs. Bulgrin: I would like to have this marked as Exhibit 1-B. This is the smaller envelope from which Mr. Carter withdrew Exhibit 1-A.

(The articles referred to were marked Government's Exhibits Nos. 1-A and 1-B for identification.)

[fol. 159] By Mrs. Bulgrin:

Q. After you examined it, did you place it back in that envelope?

A. Yes. Upon the conclusion of my analyses these items were returned to their original containers and the envelope placed in my personal narcotics locker until I made a court appearance on the matter later on in the month of February. I do not recall the precise date. At that time I left it with the clerk of that court.

Q. By the "original container," what do you mean, for the record?

A. The envelope in which it was originally received.

Q. How about this little envelope, Exhibit 1-B, from which you withdrew Exhibit 1-A?

A. That was also returned to this envelope.

Q. When you returned it, was the top of the sheath tied?

A. It was tied in a knot. I tied it myself.

Mrs. Bulgrin: That is all.

The Court: You left it with the clerk of the Superior Court?

The Witness: Of the Municipal Court, your Honor.

The Court: When was it returned to you?

The Witness: Just this moment.

The Court: By whom?

[fol. 160] The Witness: By counsel for the United States, your Honor.

The Court: Very well.

Mr. Grossman: No cross examination of this witness, your Honor.

The Court: You may step down.

(Witness excused.)

Mrs. Bulgrin: I would like to call Mr. Wilcox.

The Court: What about the rubber contraceptive? You have not identified that yet or given it a number. You have given the paper envelopes numbers.

Mrs. Bulgrin: That was 1-B.

The Court: 1-B I thought was the small envelope.

The Clerk: That was 1-A.

Mrs. Bulgrin: Exhibit 1-B is the small envelope and 1-A is the contraceptive.

The Court: Very well. Next witness.
Mrs. Bulgrin: Mr. Wilcox, please.
May Mr. Carter be excused?
The Court: Yes. You will be available on call if needed, however.

RICHARD G. WILCOX, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.
[fol. 161] The Witness: Richard G. Wilcox.
The Clerk: Your address?
The Witness: 5760 Scrivner, S-c-r-i-v-n-e-r, Long Beach.

Direct examination.

By Mrs. Bulgrin:

Q. What is your occupation, Mr. Wilcox?
A. I am a Deputy County Clerk.
Q. Will you please take a look at Government's Exhibit 1, 1-A and 1-B in front of you, sir. Did you bring those into court this morning in the same condition you find them in now?
A. I did.
Q. How long have you had custody of those articles, Mr. Wilcox?
A. Since March 12, 1957.
Q. Is that the same date that Mr. Carter left them with the clerk of the court?
A. Yes, ma'am.
Q. Are they kept in a safe or other such receptacle?
A. We have a large vault with a big steel door.
Q. Were these objects kept in that large vault during this time until you brought them into court this afternoon?
A. Yes, ma'am.

The Court: Were they in the same condition when you received them?
[fol. 162] The Witness: Yes.
The Court: As they are now?
The Witness: They were in the large envelope.

The Court: I mean all three of them were in the same container that they are in now?
The Witness: Yes, sir.
The Court: Very well.

Mrs. Bulgrin: That is all.
The Court: Cross examine.
Mr. Grossman: No cross examination.
Mrs. Bulgrin: May this witness be excused?
The Court: You may be excused.

(Witness excused.)

Mrs. Bulgrin: I would like to call Mr. Smith to the stand.

GRANVILLE MCCREADEY SMITH, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.
The Witness: Granville McCreadey Smith.
The Clerk: Will you spell your name?
The Witness: G-r-a-n-v-i-l-l-e, M-c-C-r-e-a-d-e-y, S-m-i-t-h.
The Clerk: Your address, please?
The Witness: 1440 Angelus Avenue, Los Angeles 26.

[fol. 163] Direct examination.

By Mrs. Bulgrin:

Q. What is your occupation, please, Mr. Smith?
A. I drive a taxicab for the Yellow Cab Company here in Los Angeles.
Q. Mr. Smith, were you on duty in the evening of February 18, 1957, as such?
A. Yes.
Q. Did you see the defendant Rios on that evening in Los Angeles?
A. Yes.
Q. Were you driving your taxicab at that time?
A. Yes.
Q. Where did you see him and what happened? Where did you first see him and what happened at that place, Mr. Smith?

A. He hailed my taxicab at Third and Broadway. I was cruising south on Broadway looking for a fare, and he hailed me.

Q. Was he alone at that time?

A. No, there was another man with him.

Q. Where did you take them?

A. To First and Flower.

Q. What happened at First and Flower, Mr. Smith?

A. There is an apartment house there at the northwest corner, and he had me put my taxicab up into a parking lot [fols. 164-165] adjacent to this large building, and he asked me to wait there for them.

Q. Did you do so?

A. Yes.

Q. Where did they go, Mr. Smith?

A. Well, so far as I noticed they walked over toward the apartment, I believe the defendant walked toward the front entrance, that would be the east entrance, and his companion walked over toward a sort of an entrance toward the side, I think on the south side of the building.

Q. After they each walked toward the building, did you wait there in the lot?

A. Yes.

Q. Did you receive any money before they left from the defendant?

A. Yes, the defendant gave me a $2 deposit and asked me to wait for them; said they would be a few minutes.

Q. How long did you wait, Mr. Smith?

A. In the neighborhood of 10 minutes.

Q. Did either of the two men come out of the apartment-house after that?

A. Yes, the defendant did.

Q. What did he do?

A. Let me say this, my taxicab was facing south, I had my back to the apartment house, and I heard the defend- [fol. 166] ant's footsteps walking toward the cab. I looked around and he was walking toward the cab from the side entrance of the building. I didn't actually see him come out.

Q. Did you see what he did after he came out of the building—I am assuming something you didn't see—but did you see what he did as he approached your taxicab?

A. He approached the taxicab. That is all I saw.

Q. Did he get in?

A. Yes.

Q. What happened after that, Mr. Smith?

A. He asked me to take him to Whittier and Concord.

Q. How far away is that, if you know, from the point where you were sitting in the taxicab?

A. Whittier and Concord from First and Flower?

Q. Yes.

A. I could give it to you more easily in terms of taxi fare and estimate and translate it into taxi fare.

Q. That is all right, if you can do that.

A. Just as a very rough guess, I would say the fare would run from there over to Whittier and Concord about $2, which would represent about a five-mile trip, give or take a mile or two.

Q. Did you commence the trip, start traveling toward that destination?

A. Yes. He asked me to proceed east on First Street [fol. 167] for a ways.

Q. What happened during the trip? Did you stop at any point?

A. Well, there are quite a number of traffic signals between First and Flower and——

Q. Let me put it this way: Did you see Officer Beckmann during the course of that trip on that evening?

Will you stand up, Mr. Beckmann? (Officer Beckmann stood as requested.)

A. I saw Officer Beckmann that evening; yes.

Q. Will you tell us what happened at the time you saw him, please, Mr. Smith?

The Court: Just before you saw him, what happened?

The Witness: Just before I saw him, Office Beckmann?

The Court: Yes.

The Witness: Well, I first saw Officer Beckmann at the intersection of First and State Streets when I was waiting for a traffic signal.

Now, prior to that time what I was doing, I was driving eastwardly on First Street.

The Court: How did you happen to stop at First and State Streets?

The Witness: I stopped for a red light.

The Court: Was there a car ahead of you?

The Witness: No, I was in the center lane straddling the [fol. 168] streetcar tracks.

By Mrs. Bulgrin:

Q. Was there other traffic there, do you recall or not?

A. Well, I didn't notice. There wasn't any going the same direction that we were in that block. Whether there were cars facing the other way waiting for the signal, I don't recall. I didn't notice.

Q. When did you first see Officer Beckmann that evening?

A. When I was waiting for the traffic signal at First and State.

Q. Was the light red at that time?

A. Yes.

Q. Will you just tell us in your own words, Mr. Smith, what happened immediately after the time you saw Officer Beckmann?

A. Well, he appeared alongside my taxicab on the right-hand side opposite the front window on the right holding a flashlight in his right hand, I believe, and his billfold in his left.

The windows on the cab, that is, the front window at any rate, was rolled up, and if he was saying anything to me I couldn't hear, but he gestured with his flashlight, I believe, toward his billfold and I got the idea that he was policeman.

Q. He wasn't in uniform at the time?

[fol. 169] A. No. And I didn't see a badge. I merely saw his billfold that he was holding in his hand.

The Court: Then what happened?

The Witness: Then I believe he turned toward the defendant who was riding in the back of the cab and I think he motioned with his billfold toward the defendant and he opened the door. Now somewhere along in here I think Beckmann disposed of his flashlight. I didn't notice exactly what happened there.

By Mrs. Bulgrin:

Q. What did the defendant do? What was happening as far as the defendant was concerned?

A. Well, he appeared to be becoming quite agitated.
Q. While he was inside the cab?
A. While he was inside the cab, yes.
Q. When the door opened did he get out?
A. Well, there are other events before he got out.

The Court: What were they?

The Witness: Well, I am trying to get these in the right order. It is difficult because things happened quickly.

The Court: Yes?

The Witness: Officer Beckmann——

The Court: Did you see Policewoman Grace?

The Witness: Not at that time.

The Court: Go ahead.

[fol. 170] The Witness: Officer Beckmann opened the door and I asked him who he was, that is, he opened the rear door of the taxicab and he said, "We are police officers." I just wanted to satisfy my own mind about that. I didn't know whether he was a policeman or a hijacker positively, but I thought that he was a policeman but I wanted to be sure. So he said, "We are police officers."

I thought probably it was just a routine examination. I work the night shift, have for some time, and I have been stopped by the police and they have checked the occupants of my cab. There have been quite a few holdups of taxi drivers and I just thought it was a routine thing.

But the defendant was getting quite agitated and I noticed at this time that Officer Beckmann had his revolver drawn, which seemed to me somewhat extraordinary just to stop and question an occupant of a cab, and said something to the effect that you are scaring him, what is the big idea, something like that. I don't remember my exact words.

As I recall then Officer Beckmann took the defendant by the arm——

By Mrs. Bulgrin:

Q. That was after the defendant got out of the cab, is that correct?

A. It was my impression that Officer Beckmann took hold of the defendant's arm while he was still in the cab.

[fol. 171] Q. That is just your impression?

A. The defendant was sitting right next to the door on the right-hand side in the back seat, and I didn't hear what Officer Beckmann said to the defendant.

Q. During the time these events, Mr. Smith, were happening, in which direction were you facing?

A. Well, I was facing toward the defendant and Officer Beckmann. I turned my head to see what was going on.

Q. You turned your head to the right, is that correct?

A. Yes.

Q. Did you watch the proceedings as they transpired?

A. Yes.

The Court: How could you tell the defendant was agitated?

The Witness: Well, it is a rough impression but I was sufficiently impressed with the fact at the time to protest to Officer Beckmann that he was frightening him, and as far as I knew there was no good cause to be frightening him with a drawn revolver. Maybe it was me who was agitated.

By Mrs. Bulgrin.

Q. Mr. Smith, did you know why the defendant was agitated at that time?

A. No.

Q. Could you see below the window on the right-hand side of the cab?

[fol. 172] A. Below the window?

Q. Outside the cab and below the window of the right side of the cab.

A. No.

Q. Could you see in the back seat below the level of the back of the front seat? Do I make myself clear?

A. No. Repeat the question.

Q. Could you see the rear floor of the cab just in front of the rear seat?

A. No. The only way I could have seen that would have been to have raised up bodily and looked over.

Q. Did you do that?

A. No. I had no occasion to.

Q. Did you get out of the cab yourself during this episode or did you stay in the cab?

A. No, I stayed in the cab at that time.

Q. After did the defendant get out of the cab? Was the defendant outside of the cab at any time after that?

A. Yes, the defendant got out of the taxicab.

The Court: When did you first see Policewoman Grace?

The Witness: That was later on.

The Court: When was that?

The Witness: Afterwards. I saw Policewoman Grace after the defendant broke away from Officer Beckmann.

[fol. 173] By Mrs. Bulgrin:

Q. Would you then, Mr. Smith, tell us what happened after the defendant got out of the cab?

A. He was protesting in an agitated manner, at least it appeared to be agitated to me—"What did I do? I didn't do anything. I didn't do anything."

And Officer Beckmann was endeavoring to hold him by his right arm, and Officer Beckmann had his revolver in his right hand, and the defendant kept edging away, trying to edge away, back away from Officer Beckmann, and pretty soon he broke away from him and ran around the corner.

Q. Did you happen to hear any of the conversation that took place between the defendant and Officer Beckmann outside of the car before he broke away?

A. Just that part I have re eated here already, that the defendant was protesting that he didn't do anything. He said that several times. I didn't hear anything that Officer Beckmann said.

Q. But you were still sitting in the cab at this point, is that right, Mr. Smith?

A. Yes.

Q. Did you see what happened to the defendant or Officer Beckmann after he broke away from the officer outside of your cab?

A. Well, the defendant disappeared around the corner.

[fol. 174] Q. Was the officer after him?

A. Shortly after he went around the corner Officer Beckmann went after him.

Q. Then did you see Policewoman Grace?

A. Yes.

Q. What happened with respect to her?

A. The first time I was conscious of her presence there at all was when she appeared alongside the right-hand side

of the taxicab opposite the front door, and she had a purse in one hand and her revolver in the other. She told me to stay right where I was and not move, and then she went after Officer Beckmann and the defendant.

Q. Was that the last of the transaction as far as you were concerned or did you see anything else happen between those three persons?

A. Well, that is a rather broad question.

Q. Did you go your own way at that time, Mr. Smith?

A. No.

Q. Did you wait there?

A. I waited there for a while. I turned the meter off on the taxicab. I didn't think the defendant would be back. I waited there and sometime in the next few minutes I heard a shot, what sounded like a gunshot. At just what point in the order here I am not sure, but pretty soon Officer Grace came back and instructed me to pull my cab around [fol. 175] the corner and go to State Street. The police car was parked directly behind by cab, so I had to do that to get out of the way, and she got in the police car and drove down State Street to an alley and up through an alley.

Q. Were you looking down the street—let me put it this way—did the officer and the defendant run toward the front of your cab and on past in the direction in which your car was facing? Did they run to the front of your car and then on down the street or into an alley?

A. Well, they ran south on State Street. My car was stopped at the pedestrian cross walk facing east on First.

Q. So they ran to your right?

A. Well they must have ran east a few steps at any rate rate, probably, and then proceeded south.

Q. Were you watching them as they went into the alley?

A. Well, I don't believe the alley was visible from that point.

Q. Did you watch them as they disappeared from your view?

A. Yes.

The Court: Did you hear Officer Beckmann say anything to Officer Grace?

The Witness: No.

The Court: Not at all while you were there?

The Witness: No.

[fol. 176] The Court: Was the rear door of your cab still open?

The Witness: Yes.

The Court: You do not know, or do you know, whether or not Officer Grace picked anything up off the floor of the cab?

The Witness: I do not know.

The Court: You do not know?

The Witness: I do not know one way or the other.

The Court: You could not see?

The Witness: No. I wasn't conscious of her presence until she came up alongside the cab.

The Court: You were a little excited yourself?

The Witness: Yes.

The Court: And maybe a little scared?

The Witness: Possibly.

Mrs. Bulgrin: That is all, your Honor. Thank you.

Cross examination.

By Mr. Grossman:

Q. Mr. Smith, did you ever see Officer Grace reach down to pick up any object from the rear floor of the cab in so far as you personally observed the events that occurred at the time you have just related?

A. No.

Q. From where you were sitting on the front seat was the torso of the defendant visible to you, that is, the part of his body above the legs, was that visible?

[fol. 177] The Court: When?

By Mr. Grossman:

Q. At the time you were sitting in the front seat of the cab watching the events that you related, from that position.

A. Well, let me say this, the lap and upwards of any passenger sitting in that part of the taxicab would be visible from the front if I were to look around.

The Court: Do you know whether or not you looked at him or were you interested in the policeman with his flashlight and badge and revolver?

The Witness: Well, I would say that the most prominent thing in my eyesight at the time was this revolver, which looked the size of a cannon.

By Mr. Grossman:

Q. Were you looking in the direction of the defendant at the time of these events, in the general direction of the defendant?

A. Just in the general direction, yes.

Q. Did you see the defendant take any object out of his pocket during the period he was inside the taxicab?

A. No.

Q. You did not see the defendant drop any object during the time he was inside the taxicab?

A. No.

[fol. 178] Q. Did you see Officer Beckmann flash his light on the floor or in the direction of the floor of the taxicab while the defendant was inside the taxicab?

A. No.

Q. Were the windows on the right-hand side of the cab rolled up so far as you recall?

A. The front window was rolled up because I customarily keep it rolled up unless I have an occasion to roll it down. I didn't pay too much attention as to whether the back window was up or not.

Q. In other words, it could have been up or not?

A. It is my impression that it was up.

Q. It is your impression it was up?

A. Yes. It is a vague impression.

Q. At the time Officer Beckmann opened the rear door of the cab, do you recall that he had any object in his hands? Did he have any object in his hands at the time he opened the rear door of the cab?

A. At the time he opened the door, I can't say just at what point in the order of these events he drew his revolver, but at some time before or after the door was opened, while Rios was still sitting in the cab, he drew his revolver.

Q. During that period he had put his flashlight away?

A. I suppose so. I never did see what happened to the flashlight.

[fol. 179] Q. But he wasn't carrying it during these subsequent events that you have related?

A. No.

Q. You didn't see him use the flashlight after he had used it to identify himself by flashing it on his badge?

A. No.

Q. When were you first aware of the presence of Policewoman Grace in or about the taxicab?

A. Well, shortly after Rios and Officer Beckmann disappeared around the corner.

Q. Where was she standing in relation to the cab at that time?

A. When I first saw her she was opposite the right front door of the taxicab alongside the right front door.

Q. You did not at any time see here opposite the right rear door of the taxicab?

A. I didn't see her but I wasn't particularly looking that way.

The Court: How far is it from the right front door to the right rear door?

The Witness: About two inches.

Of course, from the center of the door to the center of the front door and to the center of the back door would be maybe two feet.

[fol. 180] By Mr. Grossman:

Q. Did you see Officer Grace bend down toward the floor of the taxicab at any time when she approached the cab?

A. No, I didn't see her do that.

Q. When you first saw Officer Grace opposite the right front of the cab, did she have any objects in her hand?

A. Her purse and a revolver.

Q. Those were the only objects she had?

A. Those were the only objects I noticed.

Q. You did not see her carrying any rubber container of any sort at that time?

A. No.

Q. At the time you first saw Officer Grace, Officer Beckmann had already left the vicinity of the cab, is that correct?

A. That is right.

Q. And you did not hear any directions from Officer Beckmann to Officer Grace prior to the time he disappeared around the corner?

A. I didn't hear any.

Q. And he did not appear to the side, aside from your hearing he did not appear to be giving any directions to her at the time you saw him disappear around the corner, I gather?

A. Well, I can't testify as to what did not happen.

Q. But in so far as you were aware, you did not see him [fol. 180a] appear to be giving her any directions, whether you heard them or not?

The Court: How could he appear to be giving directions?

Mr. Grossman: I was referring to the fact he might have seen his lips moving facing in his direction, even though the conversation might have been inaudible.

The Witness: Well, I noticed a while back when Rios was talking, he was excited and speaking in a rather loud voice, protesting he didn't do anything. If Officer Beckmann said anything I didn't hear it, and it wasn't in as loud a voice as the defendant was using.

By Mr. Grossman:

Q. You didn't see Officer Grace until later in any event after Officer Beckmann had ceased speaking and was running?

A. That is right. I wasn't conscious of her presence around there until I saw her alongside the front of the cab.

The Court: Had you noticed in the rear view mirror that the car behind you had pulled up with a man and a woman when you stopped?

The Witness: At the intersection?

The Court: Yes.

The Witness: No. I may have been halfway conscious that there was an automobile behind me, but I hadn't been giving it any thought, because I pull up at hundreds of inter- [fol. 181] sections every night when I work.

By Mr. Grossman:

Q. There was no visible mark on the vehicle in which the police officers were riding to identify it as a police car, is that correct?

A. That is right.

Q. And neither Officer Grace nor Officer Beckmann was in uniform at the time of these events, is that correct?

A. That is correct.

Q. When Officer Beckmann drew his revolver, the size of a cannon, I believe you described it, were you yourself frightened?

Mrs. Bulgrin: Your Honor, I don't think that is material to this inquiry. It is just a waste of time.

The Court: Yes, it is material. It might have affected his powers of observation and he might have been thinking about that instead of other things.

Mrs. Bulgrin: Was the question answered, your Honor?

The Court: Apparently he has withdrawn it or abandoned it. He seems to be starting another question.

Mr. Grossman: I withdraw it in face of the objection.

Q. Mr. Smith, did you state to Officer Beckmann at the time he had drawn this revolver and was having this exchange of words with the defendant that he appeared to be [fol. 182] frightening the defendant? Did you make that statement to Officer Beckmann?

A. Words to that effect, yes.

Q. At that time he had drawn this revolver?

A. Yes.

Q. Did you ever hear Officer Beckmann state to the defendant prior to the time they disappeard from your view, "You are under arrest," or words to that effect?

A. No.

Q. The only evidence you had that Officer Beckmann was a police officer prior to the time that he disappeared around the corner was his statement to that effect, is that correct, that is, his statement that he was a police officer?

A. Plus his exhibiting his billfold.

Q. But you did not see his badge?

A. I did not see a badge.

The Court: The badge might have been in the billfold?

The Witness: Possibly.

The Court: That is the customary way the officers identify themselves to you, I mean plain-clothesmen, is that true?

The Witness: That is the first time I had been stopped by a plain-clothesman.

The Court: Heretofore you had been stopped by——

The Witness: Uniformed policemen.

The Court—uniformed policemen?

[fol. 183] The Witness: Yes. I don't know what the custom is, whether to exhibit the badge itself or just the billfold.

By Mr. Grossman:

Q. What did you observe Officer Beckmann do from the time the defendant got out of the cab until the time the defendant broke away as you related? What, if anything, did you observe Officer Beckmann do during that period?

A. He was trying to get the defendant to stand still, for one thing. They were standing out in the street, just alongside the cab, and Officer Beckmann had his revolver in his right hand and had ahold of the defendant by the defendant's right arm.

Q. Did you see Officer Beckmann appear to reach over as though attempting to retrieve an object from the floor of the taxicab at that time?

A. No.

On the other hand, I could't say that he could not do that either.

Q. But I was directing my question to the events as you observed them.

A. All right.

Q. Following the evening in question, the evening of February 18th, did any police officer relate to you events that were claimed to have transpired as of the evening of the 18th which you yourself had not observed?

[fol. 184] Mrs. Bulgrin: Your Honor, that would be hearsay and irrelevant.

The Court: It is outside the scope of the direct examination, not proper cross examination. Objection sustained.

Mr. Grossman: I am merely attempting to indicate, your Honor——

The Court: The objection is sustained, counsel.

Mr. Grossman: That concludes our cross examination.

The Court: Redirect?

Redirect examination.

By Mrs. Bulgrin:

Q. Mr. Smith, how long did the whole transaction take place from the time you picked up Mr. Rios until you saw the officer and Rios disappear from your view?

The Court: From the time he picked up these at First and Flower?

Mrs. Bulgrin: Yes.

Q. And the time you saw the officer and Rios disappear from your observation.

A. I don't know exactly what time they disappeared from view, but I can give you a fairly specific answer if you want to enlarge the period of time.

Q. Just give us your best estimate, Mr. Smith.

A. Twenty-five minutes.

The Court: What was the length of time between the [fol. 185] time you saw Officer Beckmann and the time they disappeared around the corner, how long was that?

The Witness: It wasn't very long. I would have to just make a rough guess.

The Court: Less than a minute?

The Witness: I would say perhaps about a minute.

Mrs. Bulgrin: What is that answer?

The Court: He says about perhaps a minute.

Mrs. Bulgrin: That is all.

Mr. Grossman: Just one further question.

Recross-examination.

By Mr. Grossman:

Q. This time period of about a minute was between which two events?

A. From the time Officer Beckmann appeared until he disappeared.

Q. From the time he first appeared to the time he disappeared?

A. Yes, sir. But that is a very rough estimate.

Mrs. Bulgrin: Your Honor, may this witness be excused? He has to go to work very shortly.

The Court: Yes, he may be excused.

(Witness excused.)

The Court: Next witness.

Mrs. Bulgrin: I would like to call Beverly Grace.

[fol. 186] BEVERLY P. GRACE, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.

The Witness: Beverly P. Grace.

The Clerk: The address?

The Witness: 150 North Los Angeles Street, Los Angeles.

The Court: That is the Police Department building?

The Witness: Yes.

The Court: Proceed, counsel.

Direct examination.

By Mrs. Bulgrin:

Q. Is it Mrs. Grace?

A. Yes.

Q. What is your occupation, Mrs. Grace?

A. Policewoman for the City of Los Angeles assigned to the Juvenile Division.

Q. Were you on dduty the night of February 18, 1957?

A. I was.

Q. With whom were you working on that evening, Mrs. Grace?

A. Officer Beckmann.

Q. Is that Mr. Beckmann sitting here in the audience?

A. It is.

Q. Did you see the defendant Rios during that evening?

[fol. 187] A. I did.

Q. At approximately what time of day did you first see him?

A. Approximately 10:40, 10:45.

Q. Will you describe for us where you saw him and what he was doing at that time?

A. At First and Flower I first saw the defendant.

Q. Was he with anyone?

A. No.

Q. Will you tell us what he was doing at that time?

The Court: Where were you?

The witness: I was sittting in the police car.

The Court: At First and Flower?

The Witness: At First and Flower.

By Mrs. Bulgrin:

Q. Was Mr. Beckmann in the car with you?

A. He was.

Q. Now, will you tell us what the defendant Rios was doing at the time you first saw him when you were sitting in the police car?.

A. He was walking towards Flower in the parking lot adjoining an apartment building. He looked up and down the street, Flower Street. He walked back toward the taxicab and got in the taxicab.

Q. Did you see where he had come from before he looked [fol. 188] up and down the street?

A. He came out of an apartment building.

Q. And what did the taxicab do then after the defendant got into it, and where did it go?

A. It drove down First Street east on First Street.

Q. Was the defendant alone when he got into the cab?

A. Yes.

Q. When did you next see the defendant, Mrs. Grace?

The Court: What happened after that?

Mrs. Bulgrin: Yes.

Q. Tell us what happened after this.

A. I was driving the police vehicle. We followed the taxicab in which the defendant was seated to the intersection of First and State Street.

Q. What did you do there?

A. The taxicab was stopped at a signal. My partner, Officer Beckmann, got out of the police vehicle, approached on the right side and I approached on the left.

Q. For the record, was this a red light that the cab stopped for?

A. It was.

Q. After you both alighted from the police vehicle, what happened? Just describe in your own words what happened.

A. I was standing on the left side of the taxicab, I was aware of the defendant getting out of the cab, and of a [fol. 189] struggle going on.

I went around to the rear of the cab, observed the struggle——

The Court: On the right side?

The Witness: On the right side of the taxi.

By Mrs. Bulgrin:

Q. Between whom?

A. My partner Officer Beckmann and the defendant.

Q. Was the defendant outside of the cab when you approached to the right-hand side?

A. The defendant was outside.

Q. Was the car door open? Was the taxicab right rear door open?

A. It was.

Q. Prior to the time you approached the right-hand side of the taxicab, Mrs. Grace, had you been able to see what was happening on that side of the cab? Could you see what had been happening on that side of the cab between Officer Beckmann and the defendant?

A. No. I was aware of some circumstance going on. I couldn't see.

Q. As you approached, did Officer Beckmann and the defendant Rios have any conversation with each other? Were any words spoken in the defendant's presence that you heard?

A. Yes.

[fol. 190] Q. Will you tell us what they were?

A. I heard my partner Officer Beckmann tell the defendant that he was under arrest. I heard him tell him he was under arrest for suspicion of narcotics.

Q. Yes?

A. I heard the defendant say words to the effect of "What did I do" and "I didn't do anything."

Q. Yes?

A. That is all.

The Court: Did Officer Beckmann say anything to you?

The Witness: Yes, he did.

The Court: What did he say to you?

The Witness: He pointed at the floor of the taxi and said, "Pick it up," "Pick up the stuff," something to that effect.

By Mrs. Bulgrin:

Q. Will you look at Exhibit, I believe it is 1-A or 1-B there in front of you, Mrs. Grace, and tell us if you picked up that object from the floor of the taxicab in response to Officer Beckmann's request.

A. (Examining exhibit) Yes, I did.

Q. Where did you find it exactly in the taxicab, Mrs. Grace?

A. It was just to the right of the middle floor in the taxicab, the right rear.

[fol. 191] The Court: Toward the back of the front seat?

The Witness: About in the middle.

By Mrs. Bulgrin:

Q. Was that on the floor right in front of the back seat, is that what you mean?

A. On the floor of the back seat.

Q. After you picked it up, what did you do with it, Mrs. Grace, that is, as to Exhibit No. 1-A? What did you do with Government's Exhibit 1-A for identification after you picked it up? Did you put it in your purse or pocket or hold it in your hand, or what did you do with it?

A. I put it in my purse, this purse (indicating).

Q. What did you do with it thereafter, Mrs. Grace?

A. I had it in my possession until I turned it over to my partner Officer Beckmann at Second and Cummings.

Q. After you picked up that object from the floor of the taxicab, will you please tell us what you did?

A. I informed the cab driver to wait right there. I ran down the street——

The Court: By this time Officer Beckmann and the defendant had gone down the street?

The Witness: They had run down the street.

By Mrs. Bulgrin:

Q. Was Officer Beckmann in back of the defendant following him down the street?

[fol. 192] A. Yes.

Q. Did you hear any conversation or any words from Officer Beckmann with respect to shooting?

A. I don't get the question.

Q. Did you hear any words after they left the taxicab spoken by Officer Beckmann with respect to shooting, any words that were spoken to the defendant Rios in connection with his halting or shooting or anything of that sort?

A. The only word I heard was "Halt."

Q. Will you tell us now what happened after they went on down the street? What did you do?

A. I told the cab driver to wait. I started running, walking-running, toward the alley.

Q. Did you see Officer Beckmann and the defendant in the alley?

A. No, I did not.

Q. When did you next see them and where?

A. At the corner of Second and Cummings.

Q. Will you describe what you saw there in connection with the defendant and Officer Beckmann?

A. The defendant was lying at the curb.

The Court: Did you go to the alley? Cummings Street is the next street beyond State Street, is it?

The Witness: Yes.

The Court: And the alley is the alley that goes from [fol. 193] State to Cummings Street?

The Witness: Yes.

I walked part-way through the alley. I turned and I walked back, told the cab driver to pull his car around the corner and wait.

I got in the police vehicle and drove through the alley to the corner of Second and Cummings.

The Court: And there you saw——

The Witness: There I saw the defendant.

The Court: —Beckmann and the defendant?

The Witness: Yes.

By Mrs. Bulgrin:

Q. About how far away was that from the point where you had stopped behind the cab at the red light, Mrs. Grace?

A. I would say approximately two blocks.

Q. Will you describe what you saw at the corner of Second and Cummings?

A. I saw the defendant lying at the curb and Officer Beckmann standing near him.

Q. Did he have his gun still drawn?

A. No, he did not.

Mrs. Bulgrin: That will be all, your Honor.

The Court: I think perhaps we will have the afternoon recess.

The jury will remember the admonition.

[fol. 194] Mr. Grossman: Before the recess, as a means of possibly saving time, may we approach the bench for just a moment?

The Court: Yes.

(The following proceedings were had between court and counsel, with the defendant, at the bench outside the hearing of the jury:)

Mr. Grossman: I thought it would expedite matters in view of the fact that we are planning, for purposes of cross examination, to get the statement of the witness produced by the Government if the Government doesn't have them here now.

Mrs. Bulgrin: I don't think we have a thing she made.

Mr. Grossman: She mentioned an arrest report, your Honor.

Mrs. Bulgrin: I don't think that she made it up.

Mr. Grossman: I thought it would expedite matters if I asked for it now.

The Court: (Addressing the witness) Did you make a separate arrest report?

The Witness: No.

The Court: Did you join in making the arrest report with Officer Beckmann?

The Witness: Partly, yes.

Mrs. Bulgrin: How do you mean, partly?

The Witness: I reconstructed my part.

The Court: Who wrote it, Officer Beckmann or you?

[fol. 195] The Witness: Officer Beckmann typed it.

The Court: Officer Beckmann typed it?

The Witness: Yes.

Mr. Grossman: One further request, your Honor. On this motion I intend to move that we also be furnished a copy, under the Jencks ruling, of the transcript of the testimony of this witness before the grand jury. This is an area as to which the application of the Jencks rule is still somewhat applicable.

Mrs. Bulgrin: There is no showing that she testified before the grand jury.

The Court: Just a moment.

The jury will be excused. You will remember the admonition. The court will remain in session and we will make our motions from the lectern down there and settle this matter.

(Whereupon the jury retired from the courtroom.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: You may proceed.

Mr. Grossman: If the court please, at this time I would like to move that any oral or written statements made by this witness to the police, including a transcript of the testimony of this witness before the grand jury—

The Court: That was not made to the police. Let us make one motion at a time.

Mr. Grossman: First I would like to move that any statement of this witness to any officer or agent of the [fol. 196] Federal Government be produced for examination.

The Court: Did you make any statement in writing to any officer of the Federal Government?

The Witness: No.

The Court: Did you make any statement in writing other than your collaboration with Officer Beckmann in the preparation ot the police report?

The Witness: No.

The Court: You have had a copy of the police report, counsel.

Mr. Grossman: I had a brief examination at a prior

time, yes, but I have not been furnished a copy for examination in connection with this proceeding.

I had suggested to the Government that time might be saved if I would be furnished one prior to the proceedings, but they indicated they would not do so unless by order of the court.

Mrs. Bulgrin: We indicated, your Honor, that the defendant's counsel could take advantage of any motion he would make, not as he suggests.

The Court: He is entitled to the same ruling now as I made before. He is entitled to have a copy of the police report if this witness corroborated in making it. I do not know which part is hers.

So far he would not be entitled to the portion which [fol. 197] I folded under the other day and did not give him access to because that witness has not been called.

It is your intention to call Officer Beckmann too, is it?

Mrs. Bulgrin: Yes, sir.

The Court: Very well.

Mrs. Bulgrin: Your Honor, part of the report deals with what is known as officer's statement.

The Court: I read the report the othe day. It is the same report, is it not?

Mrs. Bulgrin: Yes, your Honor.

The Court: It seems to me that everything is either a prior statement of Officer Beckmann or of this witness.

Mrs. Bulgrin: I noticed, your Honor, that I overlooked last time that there are statements here with respect to what the cab driver had told them and that would be outside the scope of her testimony, I believe, and Mr. Beckmann's testimony.

Would the court care to see a copy of this?

(The document referred to was passed to the court.)

The Court: Is this the same one you gave me before?

Mrs. Bulgrin: Yes.

The Court: Let me look at it again. I read it all the way through the last time.

Mrs. Bulgrin: There are portions that relate to Witness No. 1 who I believe is the cab driver.

[fol. 198] Mr. Grossman: He has been a witness here also.

Mrs. Bulgrin: They were not his statements, however.

The Court: I do not remember anything in here about the cab driver.

Counsel, in view of my ruling the other day I wish you had rewritten the portions which I indicated that the defendant was allowed to see. I do not think the defendant is allowed to see all of these reports and go on a general fishing expedition exploratory of what the Government's evidence is. It is solely for the purpose of impeachment and to determine whether or not there is a prior inconsistent statement made by the witness who is on the stand.

Now, you have not eliminated that in this report and I do not know how to go about doing it.

Mrs. Bulgrin: You mean the paragraph that you believed would not be pertinent?

The Court: The one paragraph that I deleted the other day, or attempted to delete.

Mrs. Bulgrin: Actually, your Honor, we wouldn't have any serious objection, now that the witness has come and gone, since they aren't his statements and we wouldn't have any serious objection to counsel having the report with the exception of that part—I mean, if the court is going to order that the Government exhibit it to him.

The Court: I construe the Jencks decision to require me [fol. 199] to let the defendant have copies of written statements when a witness is produced. Now if you want to break it down by giving general copies of these statements, all right, but as far as I am concerned, as a judge, I am not going to compel the investigative agencies to disclose their whole files to defendants. It is only when a witness is called to the stand and testifies that then they are entitled to that witness' words and to nothing else.

Now you want this report. You saw it the other day.

Mr. Grossman: I glanced at it briefly. I have not had a chance to examine it more thoroughly. I had suggested to the Government in order to save time today at least in so far as those portions we were permitted to see the other day, that they be furnished to us in advance. The Government having it ready, it would have saved some time, but the Government said they wanted a formal motion so I want an opportunity to inspect it now.

Mrs. Bulgrin: Mr. Grossman saw it the other day for a half-hour or three-quarters of an hour and took considerable time in reading it.

The Court: It was about 20 minutes.

Mr. Grossman: I might say I was particularly concerned with the limited portion of it at that time and a good deal of it was not relative to the motion we have before us.

I might suggest as a means of saving time if it will be [fol. 200] made available to us for inspection perhaps cross-examination could be resumed with the further cross examination, say, tomorrow morning after giving us a chance to look at it after court recesses, if that is agreeable.

Mrs. Bulgrin: I can eliminate all parts of the report, your Honor, which do not relate to this witness' testimony.

The Court: I do not know what portion of the report this witness made. She said she collaborated on it. I do not know what portion is her report and what portion is not.

Mrs. Bulgrin: I don't either, your Honor.

The Court: Although it apparently is all her report because her signature appears at the bottom of it.

Let me have your stapling machine, Mr. Clerk.

For the purposes of the record, the United States Attorney has handed to the court what purports to be an arrest report, consisting of four sheets. I have examined the report. It is signed in typing by Officer D. W. Beckmann and B. Grace.

I have folded over the bottom of a portion of page 2 which contains purported statements made to either one or the other officers by some other person who has not yet been called to the witness stand.

Likewise all of page 3 is devoted to statements by other persons, and the top line of page 4.

I have folded them over and stapled them and in that condition I will give them to defense counsel for examination. [fol. 201] Mrs. Bulgrin: Thank you, your Honor.

Mr. Grossman: I also had another motion to make, if the court please.

The Court: I will hear your other motion.

Mr. Grossman: I would like to move at this time that in light of the Jencks decision that the defendant be furnished a copy of the transcript of the testimony of Officer Grace

and in any event Officer Beckmann's testimony, as presumably he will testify, of their testimony before the Federal grand jury in this case.

The Court (Addressing the witness): Did you testify before the grand jury?

The Witness: I did not.

The Court: That is the end of your motion. Your motion is denied. She made no statement before the grand jury.

Mr. Grossman: That is in so far as this witness is concerned.

The Court: Very well. We will have a short recess.

(Short recess.)

The Court: The record will show the defendant is present in person and by counsel, and the jury is present and each one in his or her place.

Proceed.

Mr. Grossman: Thank you, your Honor.

[fol. 202] Beverly P. Grace, called as a witness by and on behalf of the Government, resumed the stand and testified further as follows:

Cross examination. (Continued)

By Mr. Grossman:

Q. Policewoman Grace, did you get off the police vehicle at the same time as Officer Beckmann got out of the car?

A. Approximately, within a matter of seconds.

Q. Did you approach the taxicab on the left side at approximately the same time that Officer Beckmann approached it on the right?

A. Yes.

Q. Did you have any object in either of your hands at that time?

A. No.

The Court: Not even your purse?

The Witness: I carry it on my shoulder. It has a shoulder strap.

By Mr. Grossman:

Q. At the time you first approached the cab, where did you stand in relation to the cab?

A. Right about the middle, the middle point between the two windows.

Q. Were you standing on the left side of the cab approximately opposite the position in which Officer Beckmann was [fol. 203] standing on the right side of the cab at that time?

A. Yes.

Q. From the time you first approached the cab on the left side until the time the defendant left the cab, isn't it a fact that you were looking in the general direction of the defendant?

A. Yes.

Q. During that period did you see the defendant take any object out of his pocket?

A. No.

Q. Did you see the defendant drop any object on the floor or in the direction of the floor of the taxicab?

A. No.

Q. Did you see Officer Beckmann slash his light on the floor of the taxicab?

A. I saw a flash of light.

Q. Did you see him flash his light to identify himself, flash it in the direction of his badge, or did you simply see him flash his light? At any rate, you said you saw him flash his light. I will let you tell the circumstances under which you saw him flash his light, if you can.

A. I saw a flash of light. I know his general procedure to flash his light on his badge.

Mr. Grossman: I move to strike the last portion with regard to the general procedure.

[fol. 204] The Court: That may be stricken.

By Mr. Grossman:

Q. In other words, you do not recall seeing the officer flash his light on the floor of the taxicab in so far as you recall?

A. No.

Q. Did you see any object on the floor of the taxicab during this period?

The Court: During what period?

By Mr. Grossman:

Q. During the period from the time you first approached the cab on the left side until the defendant left the cab?

The Court: During the period you were on the left side of the cab?

The Witness: Yes.

The Court: Did you see anything on the floor?

The Witness: No.

By Mr. Grossman:

Q. You remained on the left side of the cab until after the defendant got out of the cab?

A. I don't recall if it was until after or when he was getting out.

Q. You came around to the right side of the cab, and at that time was the defendant in or out of the cab?

A. He was out of the cab.

[fol. 205] The Court: That is when you got around there?

The Witness: That is when I got around there.

By Mr. Grossman:

Q. How long did it take you to get around the right side of the cab, just a matter of a few seconds?

A. A few seconds.

Q. You testified that you were unable to see what transpired between Officer Beckmann and the defendant on the outside of the right of the cab, is that correct, at the time you were on the left of the cab and you were unable to see what was transpiring between them on the outside of the right of the cab after the defendant alighted from the cab, is that correct?

A. Yes.

Q. Refreshing your recollection now, do you recall that as a matter of fact you were standing on the left side of the cab until after the defendant had gotten out of the taxicab?

A. I don't recall.

Q. Would you tell us why you were unable to see what transpired on the right side of the cab while you were on the left side?

A. Well, I am rather tall. I wasn't bending over looking through the window.

Q. But you were looking in the direction of the defend-
[fol. 206] ant?

A. Yes.

Q. Did you have any difficulty in seeing because of the light conditions in so far as they were a factor at the time?

A. No.

Q. It was at night, though, was it not?

A. Yes.

The Court: The intersection was lighted?

The Witness: It was lighted.

The Court: And the street was lighted?

The Witness: The street is lighted.

By Mr. Grossman:

Q. When you came around to the right side of the cab, where was Officer Beckmann standing?

A. Approximately opposite the rear door in the middle.

The Court: Was he standing or was he

The Witness: He was grappling.

The Court: He was grappling with the defendant?

The Witness: Yes.

By Mr. Grossman:

Q. He was grappling with the defendant with both arms?

A. I don't recall.

Q. You don't recall?

A. I don't recall if he was using both arms or not.

[fol. 207] Q. Do you recall if he had a gun in his hand or not at the time?

A. I don't recall at that time.

Q. Do you recall that he had any object in either of his hands at that time?

A. He had the defendant in one hand.

Q. In one hand?

A. That is right.

Q. And he was struggling using only one hand at the time, is that correct?

A. I know of one hand.

Q. At least one hand and possibly both?

A. Yes.

Q. Did you see Officer Beckmann make any effort to retrieve any object from the floor of the cab at that time?

A. No.

Q. Prior to the time Officer Beckmann spoke to you, did you see any object on the floor of the cab?

A. No.

Q. You testified that Officer Beckmann pointed at an object. Will you just describe for us briefly his manner in which he pointed at the object?

A. Well, he was holding on to the defendant, he was twisting his shoulders and he says, "Grab it," "Pick up the object."

[fol. 208] Q. Which way was Officer Beckmann facing at that time?

A. He was facing toward the cab. That would be north.

Q. Do you recall which hand he pointed with?

A. No.

Q. At the time you came around to the right side of the cab, did you have any object in your hand?

A. No.

Q. You did not have a gun in your hand either at that time?

A. Not at that time.

Q. After coming around to the right side of the cab, did you approach the cab driver?

A. After the defendant and the officer had left the scene.

Q. At that time did you have a gun in either of your hands?

A. I possibly could have had at that time.

Q. Do you recall whether you did or not?

A. I don't recall.

Q. Do you recall if you had any object in either hand at that time?

A. I had the Exhibit 1-A.

Q. You had that in your hand at the time you approached the cab driver?

A. Yes.

[fol. 209] Q. Did you carry it in your hand over to the point at which you met up again with Officer Beckmann?

A. No.

Q. What did you do with it?

A. I put it in my purse at some time.

Q. This was after you approached the cab driver?

A. It possibly was.

Q. But you did testify, am I correct, that you approached the cab driver with this object in your hand?

A. I don't recall if I did or not.

Q. Do you recall with which hand you retrieved the object from the floor of the cab?

A. No.

Q. Do you recall whether you retrieved an object from the floor of the cab?

A. Yes.

Q. Do you recall where the object was laying on the floor of the cab?

A. Yes.

Q. Was it laying toward the front or rear of the floor of the cab?

A. It was laying approximately about in the middle between the rear and the front.

Q. In the middle of the floor of the cab?

A. A little to the right of the middle of the cab, approxi-[fol. 210] mately in the middle of the floor of the cab between the front and rear seat.

Q. What division of the Police Department are you with, Officer Grace?

A. The Juvenile Division.

The Court: You are authorized to make arrests as a juvenile officer?

The Witness: Yes.

The Court: Subject to any assignment that they choose to give you?

The Witness: Yes.

By Mr. Grossman:

Q. Did the defendant appear to be a juvenile to you at the time you first saw him?

A. No.

Q. Prior to the first time you saw the defendant on February 18th, did you have any idea as to the identity of the defendant?

A. No.

Q. Do you recall the location of the apartment house that you say the defendant got out of at the time you first saw him in the vicinity of First and Flower?

The Court: Let me hear that question again.

(The question referred to was read by the reporter as follows:

[fol. 211] ("Q. Do you recall the location of the apartment house that you say the defendant got out of at the time you first saw him in the vicinity of First and Flower?")

The Witness: Yes.

By Mr. Grossman:

Q. What was that?

A. It is the northwest corner of First and State.

The Court: First and State?

The Witness: Correction. First and Flower Streets.

By Mr. Grossman:

Q. From the point at which your police car was parked, was the alley that you refer to running between State and Cummings visible to you?

A. Not from the police vehicle, I don't believe.

Q. At the time you were standing outside the cab, from the cab was it visible to you?

A. Not unless you knew it was there.

Q. Let me reframe my question: Assuming you were looking for the alley, could you see the alley from that point?

A. Would you brief me on the point?

Q. From a position standing on the right side of the cab.

A. From the front of the cab?

Q. You could see the alley?

[fol. 212] A. Yes.

Q. At approximately what point did Officer Beckmann

and the defendant pass out of your view after they proceeded away from the cab? About how far had they traveled before they disappeared from your view after they got out of the cab?

A. When they were in the alley.

Q. You saw them in the alley?

A. No. That is when they passed out of my view.

Q. When they entered the alley?

A. Yes.

Q. And that was approximately how far from the cab?

A. I am no judge of distances.

Q. Just as best you can approximate it.

The Court: Half a block?

The Witness: A quarter of a block; nearer a quarter of a block.

By Mr. Grossman:

Q. But you did see the defendant, you were able to see the defendant for a period after they went aronnd the corner of the intersection of First and State, is that correct, up until the time they got into the alley?

The Court: That has been asked and answered. She said she did, that she saw them until they disappeared in the alley.

Mr. Grossman: That concludes our cross examination of this witness, your Honor.

[fol. 213] The Court: Redirect?

Mrs. Bulgrin: No, your Honor.

The Court: Step down.

(Witness excused.)

Mrs. Bulgrin: I would like to call Officer Beckmann.

D. W. Beckmann, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.

The Witness: D. W. Beckmann; B-e-c-k-m-a-n-n.

The Clerk: And your address, please?

The Witness: 1238 North Everett Street, Glendale.

Direct examination.

By Mrs. Bulgrin:

Q. What is your occupation, Mr. Beckmann?

A. I am a City of Los Angeles police officer assigned to the Georgia Juvenile Division.

Q. Were you so assigned on February 18, 1957?

A. Yes, ma'am.

Q. What particular division of the Juvenile Bureau of your Police Department were you assigned to on that night?

A. Central Division in the area of First and Flower.

Q. Did you have anything to do with narcotics cases in particular on that date?

A. Yes.

[fol. 214] Q. Were you assigned to narcotics cases?

A. I wasn't assigned to a specific narcotics case. I work narcotics in the area.

Q. That is what I mean.

A. Yes.

Q. Had you previously had any assignments involving narcotics cases, Mr. Beckmann?

A. Yes.

Q. For how long a period of time?

A. Well, I worked primarily narcotics for four years in the Newton Division, and then while being assigned to Juvenile I also worked narcotics in Juvenile.

The Court: How many arrests have you made?

The Witness: Throughout my career on the department?

The Court: Yes, for narcotics.

The Witness: Well, in the last five years I would say roughly at least a hundred or more a year.

The Court: Does the vicinity of First and Flower Streets have a reputation as being a hangout for distributors or users of narcotics?

The Witness: Yes, sir.

The Court: It it good or bad?

The Witness: Bad.

By Mrs. Bulgrin:

Q. Now, Mr. Beckmann, who were you working with on

[fol. 215] that night?

A. Policewoman Grace.

Q. Is that the policewoman who preceded you on the stand and testified in this case?

A. Yes, ma'am.

Q. Did you see the defendant Rios on that evening?

A. Yes, ma'am.

Q. When did you first see him, Mr. Beckmann? Tell us where he was and where you were.

A. I observed the defendant in the parking lot on the northwest corner of First and Flower. I was just south of the intersection on Flower Street parked in a police vehicle, an unmarked vehicle.

I saw the defendant walk out to the sidewalk, look up and down Flower Street and look down First Street, and then walk back into the lot and get into the taxicab that was sitting on the parking lot.

Q. Will you tell us where the taxicab went and what you did after that?

A. The defendant entered the taxicab on the parking lot, the driver left the lot, turned southbound on Flower and and eastbound on First Street.

We then followed the taxicab, my partner Policewoman Grace was driving the police vehicle, and we followed the taxicab to First and State Streets.

[fol. 216] Q. Now, at First and State Streets, will you tell up what happened there, please, Officer Beckmann?

A. At First and State Streets the cab was stopped for a traffic light. There was a vehicle in front of the cab.

Q. Was it a red traffic light?

A. Yes. The cab was in the lane next to the double line. My partner drove up in back of the cab. I alighted from the right side of the police vehicle, my partner, Officer Grace, alighted from the left side of the vehicle.

I approached the cab on the right side, my partner on the left side.

I had my badge in my left hand and a flashlight in my right hand——

Q. Excuse me, Officer Beckmann.

Did she reach the right-hand side of the taxicab at the same time you did or not?

A. She was on the left side of the taxicab, I was on the right side.

Q. Now, will you tell us what happened as you stood on the right-hand side of the taxicab?

A. When I reached the right side of the taxicab I exhibited my badge and showed my flashlight on the badge to the cab driver and the defendant, and told them I was a police officer.

At that time the defendant took an object out of his [fol. 217] pocket, Object 1-A, took the object out of his pocket, out of a blue jacket, out of his right pocket, and dropped it on the floor of the cab.

Q. I wonder if you can demonstrate for the jury's benefit how he reached into his pocket and let it drop?

A. He had a zipper jacket on with a pocket.

Q. Do you recall which arm he used?

A. The right arm. He took it out of his pocket and dropped it on the floor (demonstrating).

Q. Was it the arm that was next to you as he was sitting in the cab?

A. Yes.

Q. Did he reach across his chest into his jacket with his right arm?

A. No, he reached into the pocket on the right side, a patch pocket on the right side.

Q. How did he let it drop? Did he let it drop from the pocket or did he put it in front of him?

A. No, he took it out of the pocket and dropped it like this (demonstrating).

Q. How long after you arrived did he do that?

A. Approximately seconds after I had identified myself. He looked in my direction, then took the object out of his pocket and dropped it.

The Court: All this occurred during the length of time [fol. 218] that it took you to say, "I am a police officer," and flash the light on your badge?

The Witness: Yes, sir.

By Mrs. Bulgrin:

Q. After he did that, Officer, what happened?

A. When he did that he grabbed the door of the cab and attempted to open it, and I grabbed the door of the cab and attempted to open it also.

Q. Did it come open?

A. Yes. The defendant alighted from the cab and I grabbed the defendant by the arm with my left hand.

He kept pulling away from me and kept saying, "I have not done anything, I have not done anything."

At that time I told him he was under arrest for suspicion of narcotics and I attempted to reach down with my right hand and retrieve the object he had dropped on the floor.

He kept pulling away and I couldn't pick up the object, and he kept saying, "I haven't done anything, I haven't done anything," and I kept saying, "You are under arrest, stop struggling."

I at that time pulled my gun and told him again he was under arrest for narcotics.

When I did this, while the struggle was going on, my partner, Policewoman Grace, came around the vehicle and I pointed to the object in the cab and told her to pick it up.

[fol. 219] I think I told her to pick it up as soon as she got around the cab, and I think before I pulled my gun out. However, I did point to the object and told her to pick it up and I kept trying to hold onto the defendant with my left hand.

The defendant then took off, running eastbound on First Street and southbound on State Street. I was pursuing him with my gun in my right hand, telling the defendant to stop, that he was under arrest, that if he didn't stop I would shoot.

I then chased the defendant into the alley that runs parallel with First Street, between First and Second. I chased him down the alley at that time.

Q. Excuse me, Officer. May I interrupt you here?

With respect to Government's Exhibit 1-B, had you ever seen a container, a similar rubber container——

The Court: That is 1-A.

Mrs. Bulgrin: Thank you, your Honor.

Q. —1-A, which is the rubber container filled with a whitish powder, had you ever seen a similar colored container of that sort containing heroin during the course of your duties involving narcotics assignments previously?

Mr. Grossman: I object to this line of inquiry as involving a matter which is not directly pertinent to any issue before the jury in this proceeding.

[fol. 220] The Court: Overruled.

Your question is whether or not he is familiar with whether or not that is a commonly used means of carrying heroin?

Mrs. Bulgrin: Yes. That is my question.

The Witness: Yes, it is.

Mrs. Bulgrin: All right.

Q. Now, I believe you were describing the fact that you were chasing the defendant. Would you continue to tell us what happened in that respect, please?

A. The defendant continued to run down the alley and I fired a shot at the defendant. When I fired the shot at the defendant I saw the defendant stagger and I caught up with the defendant.

The defendant turned around at that time and I observed that he had blood on his left front abdomen.

At that time he told me, "Go ahead and kill me, I want you to kill me, Officer."

I said, "Stop struggling. You are hurt. I want to take you to the hospital."

He replied, "I want you to kill me. Go ahead and kill me."

I put my gun away and again told him to stop struggling.

At that time he tried to kick me between the legs. When he did this I took my sap out of my pocket, attemped to sub-[fol. 221] due the defendant with my sap. The defendant and I continued to struggle. He broke loose and ran eastbound through the alley again. I caught up with him. He turned and attempted to fight me again.

I attempted to strike him with my sap. When I attempted to strike him with my sap he would get his right arm up and I was unable to.

Then he would break loose again and run again. When we got to the corner of the alley at Second and Cummings I again attempted to subdue him with my sap and lost my sap. Then I chased him to Second and Cummings, to the northeast corner of Second and Cummings, where I managed to get a choke hold on him and subdued him. At that time he fell to the gutter.

At that time I then took him into physical custody and shortly thereafter my partner came and met me there at Second and Cummings.

Q. Did you then take him out to the hospital after that time?

A. I immediately called an ambulance. The ambulance then transported him to Georgia Street Receiving Hospital. I accompanied him to Georgia Street.

From there he was taken to the General Hospital prison ward.

Q. By the way, was he alone in the taxicab at the time you approached the cab, and during this transaction, except [fol. 222] for the cab driver, of course?

A. Yes, he was alone.

Q. Was the cab driver sitting throughout all of this, so far as you know, in the front of the cab behind the driver's wheel?

A. Yes, he was in the front.

Mrs. Bulgrin: At this time, your Honor, I will offer in evidence Government's Exhibit 1-A, which is the rubber container with the powder, together with the other two envelopes which are Exhibits 1 and 1-B.

Mr. Grossman: May we approach the bench for a moment?

The Court: Yes.

(The following proceedings were had between court and counsel at the bench, with the defendant present, outside the hearing of the jury:)

Mr. Grossman: Simply for the record, I wish to object to the receipt of this evidence on the grounds heretofore set forth in our motion which has heretofore been denied by this court.

The Court: Objection overruled.

(The following proceedings were resumed in open court:)

The Court: The exhibits are admitted in evidence.

(The objects referred to were received in evidence as Government's Exhibits Nos. 1, 1-A and 1-B respectively.)

The Court: Does that finish your direct examination? [fols. 223-225] Mrs. Bulgrin: Yes, sir.

The Court: We will recess until tomorrow morning at 10:00 o'clock. The jury will remember the admonition.

(Whereupon, at 4:05 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., Wednesday, July 24, 1957.)

[fol. 226] Los Angeles, California, Wednesday, July 24, 1957, 10:00 A.M.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Any ex parte matters?

The Clerk: No, your Honor.

The Court: Case on trial.

The Clerk: 26,019, United States of America v. Jose Terones Rios for further jury trial.

Mr. Grossman. The defendant is ready, your Honor.

Miss Bulgrin: The Government is ready.

The Court: The record will show the defendant Rios is present in person and by counsel and the jury is present and each one in his or her place.

Do you have your proposed instructions?

Miss Bulgrin: No, I don't. I will have them for the court at recess.

The Court: All right.

Officer Beckmann, I think, was on the stand.

DUWAYNE BECKMANN, called as a witness by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Miss Bulgrin: If your Honor please, Mr. Grossman is willing to stipulate that he has in his possession at this time the police officer's report which was handed to him yesterday by the court.

The Court: And you have handed it to him now?

[fol. 227] Miss Bulgrin: Yes, in the same condition it was handed to him yesterday, your Honor. It has been returned to him this morning for use during his cross examination and he is willing to stipulate that he has it in his possession again.

The Court: And in the same condition which I indicated it to be when I handed it to him yesterday.

Miss Bulgrin: That is correct. Is that so stipulated, Mr. Grossman?

Mr. Grossman: So stipulated

Cross-examination.

By Mr. Grossman:

Q. Officer Beckmann, when you first saw the defendant in the vicinity of First and Flower did you have any idea as to his identity?

A. No.

Q. Incidentally, I believe you testified that you were assigned to the Juvenile Division of the police department?

A. Yes.

Q. And at the time of the arrest of the defendant you were not assigned to the Narcotics Division of the police department?

A. No.

Q. At approximately what time did you and Officer Grace pull up behind the taxicab in which the defendant [fol. 228] was a passenger at First and State Streets?

A. It was approximately 10:50 p.m.

Q. And in what manner did you identify yourself to the defendant?

A. With my—I had my badge in my left hand and my flashlight in my right hand and told him I was a police officer.

Q. Do you recall whether the windows were open on the right side of the cab—were opened or closed at the time you identified yourself?

A. I can't recall.

Q. You don't recall that?

A. No.

Q. Approximately where were you standing when you identified yourself to the defendant in relation to the cab?

A. Near the right rear window—near the right rear window, near the window on the right side by the rear seat.

Q. Where you standing at approximately the center of the right side of the cab?

A. Yes.

Q. Were you standing approximately opposite the position in which Officer Grace was standing on the left side of the cab?

A. I don't recall just where she was at that time. I knew she was on the left side of the cab but I wasn't [fol. 229] watching Officer Grace; I was watching the defendant.

Q. And at the time you were identifying yourself to the defendant by flashing your light on the badge, that was the time at which you saw the defendant drop the package, is that correct?

A. Shortly thereafter. After I identified myself he did this.

Q. Well, is it not a fact that it was when you identified yourself to the defendant that you saw him drop the package?

A. I identified myself and then I saw the defendant drop the package.

Q. Did you or did you not see him drop the package at the time while you were in the process of identifying yourself?

The Court: The question has been asked and answered three times.

By Mr. Grossman:

Q. Perhaps I can refresh your recollection on that, Officer Beckmann.

Did you not testify under oath on March 12, 1957 as follows——

The Court: Show it to him before you read it.

Mr. Grossman: Very well.

The Court: Do you have a transcript?

Mr. Grossman: I have a copy which might be a photostatic copy of the transcript.

The Court: Any objection to the use of it?

[fol. 230] Miss Bulgrin: No. But I would like to know which page he is reading from.

Mr. Grossman: I will indicate that when I show it to the witness. I am referring to page 6, lines 8 through 10.

(Document handed to the witness.)

The Witness: Yes.

By Mr. Grossman:

Did you not testify under oath at that time as follows:

"When I identified myself to the defendant he reached in his jacket pocket, a blue jacket, and dropped a white object on the floor."

The Court: That is just what he got through testifying to here, counsel. There isn't any inconsistency with that statement and his statement here.

Mr. Grossman: Well, your Honor, I believe he is now testifying that he first identified himself and at the previous time he said when he identified himself. I think the jury can judge whether there is any inconsistency.

By Mr. Grossman:

Q. Did you, Officer Beckmann, was it you or the defendant who jerked open the door of the cab on the right side?

A. We both—it was fairly close—we both opened the door. I attempted to open the door and the defendant attempted to get out of the cab.

Q. Well, but who actually—someone actually opened [fol. 231] the door of the cab. Was that you or the defendant who actually opened the door of the cab?

A. Well, I could have and he could have—it happened so quickly, sir.

Q. You don't recall whether you opened the door of the cab?

A. I recall the door was opened and the defendant tried to get out.

Q. But you don't remember whether you opened it?

The Court: Counsel, he testified that he and the defendant were both trying to open the door. Now, are you asking him whose application of strength on the mechanism it was that turned the latch?

Mr. Grossman: Yes; essentially I am asking him and I believe the reason for this will become clear from some questions that will follow.

By Mr. Grossman:

I just want to know did you open the door of the cab?

A. I could have.

Q. Did you see the defendant drop the object before or after the door of the cab was opened?

A. Before the door of the cab was opened.

Q. You are sure of that?

A. Yes, sir.

Q. I will show you—

[fol. 232] The Court: Is that the police report?

Mr. Grossman: Yes, your Honor.

The Court: What page?

Mr. Grossman: It is the police report, page No. 2, I believe it is.

The Court: All right.

By Mr. Grossman:

And I will call your attention to this passage particularly.

A. (No answer)

Q. Officer Beckmann, did you not make the following statement in the arrest report in this connection, in connection with the activities to which you are testifying, and I quote:

> "When Officer Beckmann identified himself to arrestee, arrestee reached inside of his jacket pocket extracting a white object. When the arrestee did this Officer Beckmann opened the cab door and observed arrestee drop the object to the floor by his feet."

Did you so state in your arrest report, Officer Beckmann?

A. Yes.

Q. Does that refresh your recollection as to the sequence of events?

A. No. The sequence of events, as I have testified to, are actually the events that happened.

[fol. 233] Miss Bulgrin: What?

The Witness: As I have testified previously to this, those are the sequence of events.

By Mr. Grossman:

In other words, the sequence of events are as you testified here and not as you stated in the arrest report?

A. Yes, primarily.

Q. Thank you. Do you recall when in the sequence of events at First and State streets you first drew your gun?

A. After I had pointed out the object to my partner, a policewoman, Policewoman Grace and while struggling with the defendant.

Q. In other words, Officer Beckmann, you didn't—you hadn't drawn your gun while the defendant was still in the cab?

A. No.

Q. You didn't draw your gun until after the defendant had alighted from the cab?

A. That is correct, sir.

Q. You hadn't drawn your gun until after you pointed out this object on the floor of the cab to Officer Grace?

A. That is correct.

Q. Did you have any object in either hand at the time the defendant alighted from the cab?

A. No, I don't think I did.

[fol. 234] Q. Did you make any attempt to retrieve the object from the floor of the cab, Officer Beckmann?

A. Yes.

Q. Would you describe for us the motion by which you attempted to do this?

A. I attempted to restrain the defendant with my left hand and I attempted to retrieve the object with my right hand. I was reaching into the open cab door to retrieve the object laying on the floor and also trying to hold onto the defendant at the same time.

Q. And where were you standing at that time in relation to the cab?

A. By the side of the cab on the right side.

Q. Right alongside the cab or just——

A. Right by the cab.

Q. Right flush up against the cab?

A. Right next to the cab—right by the open door.

Q. As close as you could be to the cab—I mean against or as close as you could be to the rear door of the cab, is that right, standing outside the cab?

A. I was standing outside the cab.

Q. But you were standing directly beside the rear door of the cab?

A. Yes, trying to reach into the cab and retrieve the object.

[fol. 235] Q. And where was the defendant standing?

A. He was struggling with me by the right side of the cab.

Q. I said where was the defendant standing—what was his position?

The Court: He said he wasn't standing; he said he was struggling.

By Mr. Grosmann:

What position was the defendant in geographically at that time? He occupied some position, I assume.

A. On the right side of the cab.

Q. And in relation to what side of you was the defendant on at the time—the right or left, in front of you or behind you?

A. Well, I was facing in all directions, sir. I was facing the defendant, which would be facing south at one time, west at one time and also trying to look into the cab which would place me facing north.

I was struggling with the defendant right there at that particular spot.

Q. You say when you faced the defendant you were facing south. In other words, you were between the defendant and the cab?

A. Yes.

The Court: All the time or at one time?

[fol. 236] The Witness: At one time.

By Mr. Grossman:

You were between the defendant and the cab at the time Officer Grace came around to the right side of the cab?

A. Yes.

Q. And when you pointed out this object to Officer Grace you were pointing, as it were, behind you, is that correct, when you were pointing at an object that was behind you or in front of you at that time?

A. I pointed at the object with my right hand which would be to the right of me.

The object—this is rather hard to explain sir. The object was laying on the floor of the cab. The cab door was open

on the right side. I was on the right side of the cab trying to hold the defendant with one hand. The defendant kept pulling away from me and I restrained him with one hand and also tried to reach into the cab to retrieve the object in the cab and my partner then, Officer Grace, came around and I pointed to the object.

Q. I beg your pardon?

A. When she came around to the cab on my side I told her to pick up the stuff—pick up the object.

Q. You did what—did you turn?

A. I turned, yes. I pointed at the object and when I pointed at the object I turned, I guess.

[fol. 237] Q. But you are not sure whether at the time you pointed at the object you were facing toward the cab?

A. Yes. I pointed it out like this and said: "Pick up the stuff."

Q. Where was the object—what part of the floor of the cab was the object on?

A. On the floor board in back of the front seat, near the right center, to the right of the center.

Q. To the right of the center?

A. Yes.

Q. Did you see Officer Grace pick up the object from the floor of the cab?

A. No, I didn't.

Q. Approximately what was the size of the object you referred to?

The Court: He identified it here yesterday. It is right here. You can show it to the jury.

By Mr. Grossman:

Q. Well, was it——

The Court: Where is it, Mr. Clerk?

The Clerk: Right here, your Honor.

(Object handed to the witness.)

The Court: Do you want him to give his estimate in inches? Here is a ruler. It has inches and centimeters on it.

By Mr. Grossman:

Q. Was the object approximately—is it now approxi-

[fol. 238] mately occuping the same amount of space and

I say this because it is a rubber container. Is it approximately the same size as when you observed it?

A. It is a little smaller.

Q. About how large was it at that time?

A. I don't know the exact measurements.

Q. Approximately? Would you say about six inches?

A. No, it wasn't that large. It was closer to five inches.

Q. Officer Beckmann, were you the complaining witness in this case—did you first call—well, are you able to answer that?

The Court: What do you mean by "the complaining witness"?

By Mr. Grossman:

Q. Are you the individual who first called this case to the attention of the Federal Court?

A. Yes.

Q. Now, after the defendant alighted from the cab you testified, I believe, he broke away from you and you followed him, is that correct?

A. Yes.

Q. Did you overtake the defendant in an alley running between State and Cummings?

A. Yes.

Q. Were you and the defendant alone in that alley?

A. Yes.

[fol. 239] Q. Did you shoot the defendant in that alley?

A. I shot at the defendant.

Q. Well, did you hit the defendant?

A. What I did was—I shot at the defendant. After I shot at the defendant I saw him stagger and I caught up with the defendant and he had blood on his shirt.

Q. Did you call an ambulance subsequent to that?

A. Shortly after I had subdued him I did.

Q. And you fired just one shot, is that correct?

A. Yes.

Q. And do you remember testifying that you did not know whether or not as a fact you shot the defendant?

A. I am testifying, sir, as best I can to this. I didn't try to prove that I had shot the defendant. All I am saying is that I shot at the defendant. I was the only one in the alley. There was only one shot fired and I saw the

defendant stumble shortly after I had shot at him. And when I caught up with him he had blood on his shirt.

Q. Isn't it a fact that you shot the defendant in the back, Officer Beckmann?

A. I shot at the defendant when he was running down the alley, yes.

The Court: Did you hail to him to stop?

The Witness: Yes, sir.

The Court: Several times?

[fol. 240] The Witness: Several times, yes, sir.

By Mr. Grossman:

Q. My question at this point is did you shoot the defendant in the back as opposed to the front leaving aside the circumstances under which you shot him?

A. When I shot at him the defendant was running away from me.

Q. I didn't ask you that. Did you shoot him in the back or front? Was he facing away from you or facing toward you?

A. When I shot at him he was facing away from me.

Q. So you shot him in the back. Now, isn't it a fact, Officer Beckmann, that you shot the defendant after he stopped with his back toward you and with his hands raised in the air?

A. No.

Q. That is not a fact?

A. No, sir.

Q. Perhaps I can refresh your recollection. I am referring to page 18, line 16 to page 19, line 3.

The Court: I want to see that. What happened to our file?

Miss Bulgrin: I think Mr. Grossman had it.

The Court: Let me se what you have there.

Mr. Grossman: It is a photostatic copy.

The Court: Now, your last question was:

[fol. 241] "Isn't it a fact that the defendant had stopped and had his hands in the air and was facing away from this witness and you shot him?"

Mr. Grossman: That was the question I addressed to the witness.

The Court: That is what you are going to impeach him on? Is that what you propose to do?

Mr. Grossman: I will show him this page and I plan to ask one other question.

The Court: I mean is that the purpose of this?

Mr. Grossman: This is to—insofar as he testified that the defendant was running at the time and I asked him "Was the defendant stopped," or I can ask him that phase of it alone. If you prefer I will ask him simply: "Did the defendant stop" and then show him that.

The Court: Will you answer my question, counsel. I am asking you whether or not you are offering this for the purpose of impeaching him concerning his last answer?

Mr. Grossman: Yes.

The Court: It is not contradictory and it is not proper impeachment.

Mr. Grossman: Then I will ask another question.

By Mr. Grossman:

Q. Officer Beckmann, isn't it a fact that you stopped—that you shot the defendant after he stopped?

[fol. 242] A. When I shot at the defendant he was running.

Mr. Grossman: Again, your Honor, I offer that as an inconsistent statement. I think that it is rather clearly inconsistent with that phase of his testimony and I think certainly, at least, the jury should be permitted to hear that phase of it.

The Court: You can ask him the question.

Mr. Grossman: Very well.

Miss Bulgrin: What page is this?

Mr. Grossman: Page 18 and page 19.

By Mr. Grossman:

Q. Did you not testify under oath as follows on March 12—and I am quoting the questions and answers—did you not give the following answers to these questions—I am going back just one line.

"Q. That is when you shot him?

"A. I stopped him in the alley.

"Q. You stopped him in the alley?
"A. Yes.
"Q. And that is when you shot him, is that right?
"A. That is when I shot at him.
"Q. Shot at him? How many shots did you fire altogether?
"A. One shot."

The Court: Is that all?
Mr. Grossman: For the moment, your Honor.

[fol. 243] The Court: Now, counsel, that is not fair cross examination because a few answers later he gives the same testimony that he gave on this stand and the answer:

"A. One shot.
"Q. Well, there is some doubt in your mind then as to whether or not you shot the defendant, is that correct, Officer?
"A. No.
"Q. No doubt in your mind at all. All right, we have got that cleared up. Now on direct examination you testified that this defendant broke away from you several times. You have told us about once when he broke away at the cab. Now, will you tell us when he broke away from you on the other occasions?
"A. When I caught up with him in the alley and observed that he was bleeding.
"Q. That was after you shot him?
"A. That is after I shot at him."

Miss Bulgrim: Is that on page 11?
The Court: That is on page 19, counsel.
Mr. Grossman: May I state to the court I was simply—at this point I am simply attempting to have the witness—I am simply attempting to show the inconsistency in the witness's statement as to whether the defendant was running at the time.
The Court: Counsel, you cannot pick one sentence out of context in a deposition and especially when it is immediately cleared up by the man who is on cross examination.
[fol. 244] Mr. Grossman: If I may say so to the court, I believe his later statement as to the later breaking away after he caught up with the defendant, a shot was fired,

he was bleeding. That is a subsequent matter which I intended to examine him on subsequently, but at this time I am only concerned with whether the defendant was stopped at the time of the shot. I was then going to proceed into what happened after.

The testimony which the court just read relates to the circumstances that happened after he ran the second time, which is something else—that is another matter that I was going to get into, if the court please, but he did not testify at any time in his prior testimony——

The Court: He testified when he caught up with him in the alley and that is when he caught up with him.

Mr. Grossman: I think the jury will draw the proper inferences.

The Court: Well, the court has some obligations, too.

Mr. Grossman: I understand, I understand. I would now like to get into another phase of it.

The Court: The court has obligation to see that you don't waste the court's time and the jury's time and everybody's time with a lot of triviality in attempting to build up inconsistencies where they do not exist.

Mr. Grossman: For the record may I——

The Court: On page 11:

[fol. 245] "Officer, you say you did not know whether you shot at him?

"A. I shot at him.

"Q. And he was standing about a foot in front of you with his back toward you and his hands in the air at the time, is that right?

"A. Of course not."

Mr. Grossman: That is what he testified to not three minutes before he testified to what you read. I think the fact he made inconsistent statements even at a prior time——

The Court: If he did make inconsistent statements, counsel, and in my judgment they are not at all inconsistent. You pick one isolated question and answer and that doesn't prove inconsistency.

Mr. Grossman: For the record may an objection be noted to the comments of the court in the presence of the jury as to the last colloquy.

The Court: It is already noted. The record speaks for itself.

[fol. 246] By Mr. Grossman:

Q. Very well. Officer Beckmann, after you shot the defendant or shot at the defendant and noticed he was bleeding did you subsequently strike at the defendant with your sap?

A. After I caught up with the defendant I observed he was bleeding. At that time I tried to take him into physical custody and at that time he started screaming, "Kill me, go ahead and kill me."

Q. This was after you shot him that he—after you shot him he screamed?

A. After I shot him, sir, and when I caught up with him he turned and struggled and attempted to kick me between the legs.

Q. He did not——

The Court: You then did what?

The Witness: I then put my gun in my holster and grabbed with him. He tried to get away from me and while he was doing this he was still screaming, "Kill me, go ahead and kill me. I want you to kill me," and also trying to kick me.

I then took my sap out of my left pocket, my left rear pocket and attempted to subdue him with my sap.

By Mr. Goldman:

Q. By a "sap"—that is what is commonly known as a blackjack, is that right, Officer?

A. Yes.

Q. Did he actually kick you as opposed to kicking at [fol. 247] you?

A. I know he didn't kick me between the legs. He may have kicked me in the leg but I would have recalled whether he kicked me between the legs.

Q. And you struck at him several times subsequently with your sap or blackjack following this?

A. Shortly after the attempted kicking and my attempt to restrain him.

Q. And his attempt to kick you was actually after you had shot him, isn't that correct?

A. Yes.

Mr. Grossman: I have one further line of—one further question actually, which will be preliminary to matters which I think——

The Court: Go ahead and ask the question.

By Mr. Grossman:

Q. Did you testify before the grand jury in this case, Officer Beckmann?

A. No, sir.

Mr. Grossman: That concludes our cross examination.

The Court: Any redirect examination?

Miss Bulgrin: A couple of questions, your Honor.

Redirect examination.

By Miss Bulgrin:

Q. Is a "sap" standard police equipment, Mr. Beckmann?

A. Yes.

[fol. 248] Q. Approximately how long do you estimate the events at the taxicab took place—over what period of time that covered?

A. Right at the taxicab?

Q. Yes, from the time you identified yourself until you starting chasing the defendant down the street.

A. Oh, probably less than a minute.

Q. With respect to Exhibit 1-A which is the rubber container filled with powder, did you turn that over to the clerk of the court, Mr. Beckmann?

A. I booked it at our central property office in a sealed envelope.

Q. And where does it go from there?

A. From there it is taken to the criminal lab where Officer Carter testified previously he received it in a sealed condition.

Miss Bulgrin: That is all, your Honor.

The Court: In connection with your experience in narcotic work have you become familiar with the amount in grains or grams that is ordinarily used by an addict in what they call a "fix" or "pop"?

The Witness: Yes.

The Court: How much is it?

The Witness: It depends on the addict's tolerance. It depends on the addict. One addict will say that he shoots [fol. 249] approximately a gram or a gram and a half a day and the next one——

The Court: How many grains is that?

Mr. Grossman: If the court please, and for the reord, may I object to this. There is no evidence whatever as to, or any charge or evidence as to any problem of addiction or use of narcotics.

The Court: Well, this goes to the quantity of narcotics that this defendant had. He had possession of it and the presumption is that he had unlawful possession and the duty is cast upon him to explain it. I think my line of inquiry is material.

Miss Bulgrin: Your Honor, I might say for the record that the question of possession—with reference to that question the jury might be instructed that that is a question for the jury to determine.

The Court: Of course the question of possession is one for the jury.

Miss Bulgrin: Thank you, your Honor. Would you so instruct the jury?

The Court: At the appropriate time I will instruct the jury on everything.

How many grains are there in a gram? In other words, these two ounces or whatever is contained, according to the chemist yesterday about 1,019 grains, how many fixes or [fol. 250] pops would that be?

The Witness: Well, it would depend on the strength of the narcotic.

The Court: The chemist didn't testify as to the strength. He testified it was heroin, but he did not testify as to the purity of it. Is a grain a "pop"?

The Witness: Yes, one to two grains.

The Court: One to two grains?

The Witness: Yes.

The Court: And they are usually sold retail in capsules?

The Witness: Capsules or paper bindles.

The Court: All right. No other questions?

Miss Bulgrin: Nothing further.

Mr. Grossman: No questions.

The Court: Step down. Call your next witness.

Miss Bulgrin: Mr. Clerk, are all Government's exhibits in evidence?

The Clerk: Yes.

Miss Bulgrin: Then the Government rests.

Mr. Grossman: May we approach the bench at this time, your Honor?

The Court: Yes.

(The following proceedings were had at the bench and without the hearing of the jury:)

Mr. Grossman: At this time, if your Honor please, I wish [fol. 251] to make a motion for an acquittal and I think it should be made out of the presence and hearing of the jury.

The Court: Yes, it should be and it is being so made. Go ahead. What are your grounds?

Mr. Grossman: On the grounds first, that the evidence is insufficient to support a verdict of guilty in this case. On the ground that the evidence is insufficient to go to the jury and the evidence is insufficient to sustain a verdict of conviction of the defendant on the offense with which he is charged and, secondly, in order to assure preservation of our point I am renewing the grounds asserted in the previous motions—motions made prior to the trial of the case.

The Court: On the ground the evidence was unlawfully seized?

Mr. Grossman. On the ground of the ruling in the state court.

The Court: Very well, the motions will be denied. Do you want to make an opening statement now?

Mr. Grossman: Yes, if your Honor please.

The Court: Or do you want to have a short recess and think about it?

Mr. Grossman: I would like to have a short recess.

The Court: All right.

(The following proceedings were had in the presence and hearing of the jury:)

[fol. 252] The Court: We will take a short recess at this time, ladies and gentlemen. You will go to your jury room and you will remember the admonition heretofore given.

And during the recess will you give me the proposed instructions?

Miss Bulgrin: Yes, your Honor.

(Short recess)

Miss Bulgrin: I will hand the court an original and a copy of our requested instructions as well as a copy to Mr. Grossman.

The Court: The record will now show that in addition to the defendant being present with his counsel, the United States Attorney is present and the jury is present and each one in his or her place.

Do you desire to make an opening statement?

Mr. Grossman: No, your Honor.

May the record show first that the arrest report previously furnished pursuant to court order by Government counsel to counsel for the defendant, is being returned to counsel for the Government in the condition in which the defense counsel received it.

And may the record also show that a copy of the instructions requested by the defendant are being served on counsel for the Government and the original and one copy being furnished to the court.

[fols. 253-321] At this time, if your Honor please, the defense rests its case.

The Court: Very well.

[fols. 322-326] Los Angeles, California; Thursday, July 25, 1957; 11:00 A. M.

(The jury returned to the courtroom at 11:00 o'clock a. m.)

VERDICT

The Court: In Case No. 26019, United States v. Jose Terrones Rios, the record will show that the defendant is present in person and by counsel, and that the jury is present and each one in his or her place.

Ladies and gentlemen, have you arrived at a verdict?

The Foreman: We have.

The Court: Mr. Foreman, hand it to the bailiff, please.

The clerk will read the verdict.

The Clerk: "United States District Court, Southern District of California, Central Division at Los Angeles.

"United States v. Jose Terrones Rios; No. 26019, Criminal.

"We, the jury in the above-entitled cause agree and find the defendant guilty as charged in the indictment.

"Dated: July 25, 1957.

"Murray A. Wolfe, Foreman."

[fol. 327] Los Angeles, California; Monday, August 12, 1957; 2:00 P. M.

(Other court matters.)

The Clerk: Case No. 26019, United States v. Jose Terrones Rios.

The Court: This matter is on today for sentence after conviction by jury in this court and after reference to the probation department for presentence investigation and report.

Mr. Grossman, have you read the report?

Mr. Grossman: Yes, I have, your Honor.

The Court: Do you have any comment to make?

Mr. Grossman: Well, I would like to point out to the court, first, that while this statute in question also embraces sale as well as possession, that this is the only offense charged here and the conviction was tagged on the basis of the possession, which I think is one factor to be taken into consideration.

I believe that the report goes into detail as to the family status, past employment, and so forth.

The Court: Well, there were 2 ounces and 60 grains of heroin involved. Assuming that they take a grain to a pop, that is about a thousand pops, or fixes, which is quite a bit of heroin for anybody to be carrying around, especially if they are just users.

Mr. Grossman: I might say, your Honor, I believe that [fol. 328] that quantity is a factor which the Government

takes into account in putting this under the statute, for which the minimum itself, let alone the maximum, is quite severe. I believe that is one basis for the Government in bringing it under this statute, which at its best is a very severe statute.

I am not arguing with the statute, I am simply saying that that factor probably was an important one in putting it under the more severe statute with this high minimum sentence. I have been so advised, in fact, by the Government.

The Court: The record shows that he just did not get his fingers burned once before he got caught this time, but he has six convictions in the State court for previous narcotics offenses.

Mr. Grossman: I believe those are all based or all involve use. I think that was the gravamen on most of these offenses, that it was essentially addiction and possession.

I think that perhaps hospital care or something might be more helpful in this case than a long prison sentence.

The Court: I cannot see anything at all about this case here where there are any circumstances which compel me to alleviate the penalty. There have been six previous convictions of narcotics, and he had in his possession in this case 2 ounces and 60 grains. Then there is the matter of flight, the officer had to shoot him to stop him, and finally after wounding him he had to subdue him with his [fol. 329] billy. I am not impressed with any extenuating circumstances in this case.

Do you have anything to say, Mr. Rios?

The Defendant: No, sir.

The Court: Do you, Mr. Johnson?

Mr. Johnson: No. Your Honor heard the evidence in the case and is probably more familiar with it than I am.

The Court: Is there any legal reason why sentence at this time should not be imposed?

Mr. Grossman: No, your Honor.

Judgment and Sentence

The Court: It is the judgment and sentence of the court that the defendant be committed to the custody of the At-

torney General for a period of 20 years. The defendant will stand committed.

[fol. 330] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 331] In United States Court of Appeals for the Ninth Circuit

Minute Entry of Argument and Submission—February 5, 1958 (omitted in printing).

[fol. 332] United States Court of Appeals for the Ninth Circuit

Before: Pope, Fee and Hamley, Circuit Judges.

Minute Entry of Order Directing Filing of Opinion and Filing and Recording of Judgment—May 26, 1958

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 333] In United States Court of Appeals for the Ninth Circuit

No. 15,723

Jose Terrones Rios, Appellant,

vs.

United States of America, Appellee.

Upon Appeal from the United States District Court for the Southern District of California Central Division

Opinion—May 26, 1958

Before: Pope, Fee, and Hamley, Circuit Judges

Hamley, Circuit Judge:

Jose Terrones Rios appeals from his conviction for violating § 2 of the Narcotic Drugs Import and Export Act, as amended, 21 U.S.C.A. § 174.

Rios contends that it was error to receive in evidence a package of narcotics which had been seized by city police, where a state court had suppressed the same evidence, and acquitted, in a prosecution involving the identical incident.

The facts essential to a consideration of this contention are as follows: Los Angeles police officers, watching for possible illegal narcotics activity in a problem-area of the city, took under surveillance a taxicab which was parked in a lot next to an apartment house. They observed Rios approach the taxicab, look furtively about, and enter. As the vehicle drove away, the police officers followed in an unmarked police car. The time was 11:00 p.m.

When the taxicab stopped at a traffic signal, the two officers alighted from their car and approached. They had no warrant for Rios' arrest, had not seen him commit any crime, and had no idea as to his identity. One officer came [fol. 334] to the side of the taxicab where Rios was seated, and orally identified himself as a police officer. He exhibited his badge and shined his flashlight upon it. He then observed that Rios reached into his pocket and dropped an object on the floor of the taxicab.

Focusing his light upon the object, the officer saw that it was a transparent rubber contraceptive apparently filled with a light colored powder. The officer knew that it was a common practice for dealers in narcotics to use this means of carrying heroin.

Immediately thereafter, Rios pushed the right door out as the officer simultaneously pulled it out. Rios alighted. The officer grasped Rios' arm, telling him he was under arrest "for narcotics." The other officer retrieved the package from the floor of the taxicab. It was later found to contain heroin. Rios struggled free from the officer, but was later recaptured.

Charged in the California Superior Court with illegal possession of narcotics, contrary to California Health and Safety Code, § 11500, Rios was accorded a preliminary hearing. A trial was thereafter had in state court. The only evidence received was the reporter's transcript of the preliminary hearing. A motion to suppress the evidence, consisting of the package of heroin, was made and granted. The court held that the police officers did not have probable cause for arresting Rios without a warrant of arrest, and

that seizure of the evidence without a search warrant was therefore unlawful. Rios was then acquitted.

The police officer who had arrested Rios, after conferring with his superiors, went to the federal narcotics office. As a result, an indictment was returned by a federal grand jury, charging Rios with a violation of 21 U.S.C.A., § 174, referred to above. This charge related to the same incident and narcotics involved in his state prosecution.

Rios moved in the federal district court to quash the indictment on the ground that it had been obtained solely on the same evidence which had been suppressed by the state court. In the alternative, and for the same reason, he moved to suppress this evidence.

At a pretrial hearing on these motions, Rios offered a transcript of the state court hearing in which the evidence was ordered suppressed. On the basis of this showing, he [fol. 335] urged that one or other of his motions be granted. The district court declined to grant either of the motions on this showing, and stated that it would receive further evidence. Rios then introduced a transcript of the state court preliminary hearing in which the facts which led to the state court ruling were developed. The government called the two police officers to give further testimony, and they were cross-examined.

The district court then held (1) that it was not bound by the state court determination that the evidence had been illegally seized; (2) that the seizure was legal because made incident to a lawful arest; and (3) that there was no federal participation in the arrest and seizure. The motions were accordingly denied and the narcotics were later received in evidence.

It will be observed that the denial of these motions rests upon two grounds: (1) That the evidence was legally seized; and (2) that, if it was illegally seized, it is nevertheless admissible because federal authorities did not participate in the seizure.

Concerning the first of these grounds, Rios does not argue that the evidence submitted to the federal court fails to support the finding and conclusion that the evidence was legally seized. He contends only that the state court determination that the evidence was illegally seized is binding

upon the federal court and precluded such court from making an independent determination.

We do not agree. A state court prosecution and acquittal does not preclude subsequent federal prosecution and conviction of the same person on a similar federal charge. Serio v. United States (5 Cir.), 203 F.2d 576.[1] This being so, we perceive no reason why any state court ruling which leads to an acquittal in that court is binding on the federal court in a later federal prosecution.

It is true that here the state court ruling which led to acquittal pertains to a basic right—the right to be secure in person and property—which right is enforceable against both federal and nonfederal authorities.[2] It is also true [fol. 336] that the state court ruling represents an application of a method of enforcing this right—exclusion of illegally-seized evidence in a subsequent criminal trial—which both the federal government and California utilize.[3]

But the federal trial court did not here contest that constitutional principle or deny to California the right to apply, in its own way and in its own proceedings, the mutually-followed remedy. That is all California sought to do in this case—and it succeeded—by excluding the evidence and acquitting Rios of the state charge. California has not sought to exclude that evidence from use in a federal criminal proceeding.[4]

The federal court has, it is true, differed from the state court as to the findings and conclusions to be drawn from

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[1] This is an application of the rule announced in United States v. Lanza, 260 U.S. 377. See, also, Jerome v. United States, 318 U. S. 101; 16 A.L.R. 1231, 22 A.L.R. 1551, 48 A.L.R. 1106, annotations

[2] Wolf v Colorado, 338 U. S. 25.

[3] Weeks v. United States, 232 U. S. 383; People v. Cahan, 44 Cal.2d 434, 282 P.2d 905.

[4] The United States excludes from use in state court criminal proceedings, evidence seized by federal authorities under a void search warrant. Rea v. United States, 350 U.S. 214. Whether California could adopt a similar enforcement technique, we need not now decide. It did not do so in this case.

the evidence pertaining to the method of seizure.[5] No presently-recognized principle of constitutional law, evidence, comity, or res judicata[6] prevented it from doing so. If a wholly novel doctrine is to be fashioned to tie the hands of the federal courts in this regard, it ought not to be done by an intermediate appellate court.

We therefore hold that the federal trial court was entitled to make its own determination as to the legality of the seizure, and that its uncontested finding and conclusion that the seizure was legal warranted denial of the motions in question.

We reach the same result upon consideration of the second ground relied upon by the trial court in denying these motions.

Where it is conceded by the parties, or determined by the federal trial court, that incriminating evidence was illegally [fol. 337] seized, it may nevertheless be received in a federal prosecution, if the seizure was made without the participation of federal officials.[7] This is true even though the state wherein the evidence was seized, as in the case of Cali-

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[5] Actually, the federal court findings and conclusions were based upon a more extensive showing than was presented in the state court. We do not know what the state court ruling would have been on the amplified record.

[6] The application of res judicata in such circumstances has been specifically denied. Serio v. United States (5 Cir.), 203 F.2d 576, 578.

[7] Lustig v. United States, 338 U. S. 74, 78: " . . . It is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities on a silver platter . . . ."; Byars v. United States, 273 U. S. 28, 33; Center v. United States, 267 U. S. 575, per curiam, as explained in Gambino v. United States, 275 U. S. 310, 317; Weeks v. United States, 232 U. S. 383, 398. This court has long applied the "silver platter" doctrine. See Anderson v. United States (9 Cir.), 237 F.2d 118; Parker v. United States (9 Cir.), 183 F.2d 268; Symons v. United States (9 Cir.), 178 F.2d 615; Hall v. United States (9 Cir.), 48 F.2d 66.

fornia, has a state exclusionary rule similar to the federal court exclusionary rule announced in Weeks, supra.[8]

We see no reason why the same rule should not be applied where the determination that the evidence was illegally seized by state or local authorities is made by a state trial court. The "silver platter" doctrine operates on the assumption that the illegality of the state seizure has been established. How it has been established is immaterial.

Hence, even if it be assumed that the federal trial court was bound by the findings and conclusions of the state court, to the effect that the seizure was illegal, the evidence was still admissible in the federal proceedings upon application of the "silver platter" doctrine. The only escape from this conclusion is to say that the doctrine to which reference has been made is not to be applied where there has been a state court determination that the evidence was illegally obtained. We find no authority for such an exception to the doctrine.

[fol. 338] We therefore hold that the trial court did not err in receiving in evidence the package of narcotics seized by city police.

Rios also contends that the trial court erred in restricting his right to examine statements given to federal authorities by the two police officers who testified for the government. In presenting this argument, appellant relies upon the decision in Jencks v. United States, 353 U.S. 657.

Under this heading, it is argued, first, that while the written statements signed by these witnesses were produced

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[8] For example: Washington had such an exclusionary rule (State v. Buckley, 145 Wash. 87, 258 Pac. 1030) at the time we applied the "silver platter" doctrine with regard to evidence illegally seized by state authorities in that state. Parker v. United States, supra. Likewise, state rules of exclusion were in effect in Missouri (State v. Owens, 302 Mo. 348, 259 S. W. 100) and Indiana (Flum v. State, 193 Ind. 585, 141 N. E. 353) at the time the federal courts applied the "silver platter" rule with regard to exhibits seized by state authorities in those jurisdictions. See Jones v. United States (8 Cir.), 217 F.2d 381; United States v. Stirsman (7 Cir.), 212 F.2d 900.

for inspection, the court erred in excluding reports or records, prepared by federal agents, of oral statements made by the witnesses, where such reports or records were not in the words of the witnesses.

The record on appeal fails to show that there were any reports or records prepared by federal agents on the basis of oral statements made by the witnesses in question. Nor did counsel for appellant ask for any reports or records except such as were substantially in the words of the witnesses. Moreover, counsel for appellant did not, during the trial, object to the limitation which the court placed upon the reports and records to be supplied.[9]

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[9] During a pretrial hearing on certain motions, at which the two police officers testified, and while Officer Beckman was under cross-examination, counsel for Rios moved that "any transcript of any statement, oral or written, made by this witness to the federal agency—and particularly the statement just referred to—be made available by the government for inspection of the defendant," for assistance in preparing for cross-examination. Counsel for Rios then clarified this request by stating that, in asking for a "transcript," he was "referring to a transcript which purportedly set forth all of the testimony, or substantially all of the testimony of the witness, and not mere notes. . . . Substantially the witness' words."

Later during the same hearing, while Officer Grace was under cross-examination, counsel for Rios requested that "in so far as the government has any written record of the statements of this witness as setting forth the substance of her statement as opposed to mere notes taken as to the government's position in connection with her remarks, that these be produced for inspection along the lines indicated previously by Your Honor."

During a recess in the trial, and while Officer Grace was on the stand, counsel for Rios moved "that any statement of this witness to any officer or agent of the federal government be produced for examination." The witness then stated, in response to questions from the bench, that she had not made any statement in writing to any officer of the federal government, other than a police report which she had

[fol. 339] In view of these circumstances, the court ruling was not prejudicial, and, even if it were, counsel for appellant did not make and preserve a record upon which the ruling can now be examined. Whether the ruling was correct, we need not decide.[10]

Rios also argues, however, that with regard to the written statement of the witnesses, which was produced for examination, the trial court improperly exercised the right to determine the materiality and relevancy thereof. Here, too, Jencks is relied upon to support the contention.

During the pretrial hearing, counsel for the government produced a written arrest report, consisting of four sheets, prepared by Officers Beckman and Grace. Before permitting counsel for appellant to inspect this report, the court folded over, and stapled, a part thereof. The part thus excised was apparently a summary, by Beckman and Grace, of a statement which the taxicab driver had made to them. The taxicab driver was not called as a witness during this pretrial hearing.[11] Counsel for Rios voiced no objection to this procedure.

prepared in collaboration with Officer Beckman. The court ordered that this be supplied for inspection by counsel for Rios, and this was done.

Counsel at no time objected to the ruling of the court limiting the reports and records to be supplied.

[10] If this case were to be remanded for a new trial, the procedure would be governed by the recent enactment of 71 Stat. 595, adding new § 3500 to title 18, United States Code. United States v. Miller (2 Cir.), 248 F.2d 163, 165. Paragraph (e) of the new section defines the term "statement" in a manner consistent with the ruling of the trial court in this case. See, also, the legislative history of 71 Stat. 595, 2 U. S. Code Congressional and Administrative News (1957), 1861-1870.

[11] In taking this action, the court said: "The government has not and is not apparently at this moment relying on the other witness, and may not, and under my conception of the Jencks case you are not entitled to see anything relating to that other witness until the government decides to rely upon his testimony."

During the trial, the same procedure was followed. On that occasion, counsel for Rios observed that the taxicab driver had already testified in the trial. Government counsel responded by stating that the references in the arrest report were not the statements of the taxicab driver. Other [fol. 340] than the indicated remark concerning the taxicab driver, counsel for Rios did not object to this action taken during the trial.

The fact that counsel for appellant did not voice specific objection to the procedure followed would be enough to dispose of the point now under discussion.[12] The record further indicates, however, that, neither during the time the taxicab driver was on the witness stand, nor thereafter, did counsel for Rios indicate any desire to inspect any pretrial statement made by that witness, for the purpose of preparing impeachment cross-examination.

That witness had completed his testimony and, for all we know, had gone on his way. It was then too late, except upon showing an adequate excuse, to begin preparing for his cross-examination. In any event, no such request was made.

On this state of the record, and without reaching the merits, we hold that the judgment may not be reversed because of the action of the trial court in excising a portion of the arrest report.[13]

Finally, Rios contends that the trial court erred in refusing his request to examine the statements made by Officers Beckman and Grace before the grand jury.

The two officers did not testify before the grand jury. The argument therefore assumes a fact which is nonexistent. We do not reach the question of whether state-

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[12] Were we to assume that this trial court action was erroneous, we could not determine whether it was prejudicial, in view of the fact that the arrest report, with excised portion indicated, is not before us on this appeal. See United States v. Miller, supra, 165.

[13] There is some contention that the trial court unduly restricted the cross-examination relative to this arrest report. We do not agree.

ments made before the grand jury must be produced for inspection by a defendant.

Affirmed.

[File endorsement omitted.]

[fol. 341] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15723

JOSE TERRONES RIOS, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—Filed and Entered May 26, 1958

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

[fol. 342] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 343] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1958

No. 40 Misc.

JOSE TERRONES RIOS, Petitioner,

vs.

UNITED STATES OF AMERICA

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —April 20, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to the following questions:

1. Independently of the state court's determination, was the evidence used against petitioner in the federal prosecution obtained in violation of his rights under the Constitution of the United States?

2. If the evidence was unlawfully obtained, was such evidence admissible in the federal prosecution of petitioner because it was obtained by state officers without federal participation?

The case is transferred to the appellate docket as No. 854.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. April 20, 1959.

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